



COMMONWEALTH OF VIRGINIA
STANDARD CONTRACT

Contract No. UCPJMU5662

This contract entered into this 5th day of December 2019, by QuestionPro Inc. hereinafter called the "Contractor" and Commonwealth of Virginia, James Madison University called the "Purchasing Agency".

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF CONTRACT: The Contractor shall provide the services to the Purchasing Agency as set forth in the Contract Documents.

PERIOD OF PERFORMANCE: From December 5, 2019 through December 4, 2020 with nine (9) one-year renewal options.

The contract documents shall consist of:

- (1) This signed form;
(2) The following portions of the Request for Proposal CMJ-1032 dated November 28, 2018:
(a) The Statement of Needs
(b) The General Terms and Conditions
(c) The Special Terms and Conditions together with any negotiated modifications of those Special Conditions
(d) Addendum No. One, dated January 8, 2019
(3) The Contractor's Proposal dated January 7, 2019 and the following negotiated modification to the Proposal, all of which documents are incorporated herein.
(a) Negotiations Summary, dated August 30, 2019
(b) Information Technology Services Addendum, dated August 22, 2019
(c) Commonwealth of Virginia Agency Contract Form Addendum To Contractors Form, dated July 19, 2019, which shall govern in event of conflict
(d) QuestionPro's University Software Policy and License Agreement
(e) Higher Education Cloud Vendor Assessment Tool response submitted July 23, 2019 is incorporated by reference

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR:
By: [Signature]
(Signature)

Harshad Deshpande
(Printed Name)

Title: Director, QuestionPro Inc.

PURCHASING AGENCY:
By: [Signature]
(Signature)

Colleen Johnson
(Printed Name)

Title: Buyer Specialist

**8/30/19**

1. Contractor agrees that this Negotiation Summary modifies the Contractor's response to RFP# CMJ-1032.
2. Contractor's pricing for the Purchasing Agency is as follows and hereby replaces the Pricing Scheduled listed in section X. Pricing Schedule (page 35-36) of Contractor's proposal:
  - a. The University-wide license shall have all the features that come with the Enterprise Annual License including unlimited surveys, unlimited responses, unlimited questions per survey. All accounts shall have all the enterprise features along with full access to QuestionPro technical support team.

License pricing includes cost for all users within the University including separate tenant for Institutional Review Board (IRB) department (at no additional cost regardless of implementation timing), students from all departments, all staff and Professors and academic researchers, any user with a JMU email address (@jmu.edu or @dukes.jmu.edu) or class/departmental account manually created by the University Administrative Account (aka Global Administrator Account):

Year 1: \$22,000  
Year 2: \$23,000  
Year 3: \$24,000  
Year 4: \$25,000  
Year 5: \$26,000  
Year 6: \$27,000  
Year 7: \$28,000  
Year 8: \$29,000  
Year 9: \$30,000  
Year 10: \$31,000

3. QuestionPro will include one Global Theme with the license, requests for additional theme customization would be included in the license cost. Additionally, the University is able to create themes via CSS without additional cost.
4. Mobile App, API Integration, and Single Sign-On are included without additional cost.
5. Training:
  - a. Online Product Training Program included at no cost.
  - b. On-demand webinar training is provided at no cost.
  - c. Chat support, email, and phone support, online trainings, video tutorials, and help file library are included for all users at no additional cost.
  - d. Optional onsite training cost: \$1,000/day, travel included.

**8/30/19**

6. Contractor shall provide upgraded versions of the software covered in the contract that becomes available at no additional cost.
7. Contractor does not charge any additional charge card processing fees.
8. **PCI DSS COMPLIANCE:** James Madison University requires that the contractor shall at all times maintain compliance with the most current Payment Card Industry Data Security Standards (PCI DSS). The contractor will be required to provide written confirmation of compliance. Contractor acknowledges responsibility for the security of cardholder data as defined within the PCI DSS. Contractor acknowledges and agrees that cardholder data may only be used for completing the contracted services as described in the full text of this document, or as required by the PCI DSS, or as required by applicable law. In the event of a breach or intrusion or otherwise unauthorized access to cardholder data stored at or for the contractor, contractor shall immediately notify the Assistant Vice President for Finance at: (540) 568-6433, MSC 5719, Harrisonburg, VA 22807 (fax (540) 568-3346) to allow the proper PCI DSS compliant breach notification process to commence. The contractor shall provide appropriate payment card companies, acquiring financial institutions and their respective designees access to the contractor's facilities and all pertinent records to conduct a review of the contractor's compliance with the PCI DSS requirements.

In the event of a breach or intrusion the contractor acknowledges any/all costs related to breach or intrusion or unauthorized access to cardholder data entrusted to the contractor deemed to be the fault of the contractor shall be the liability of the contractor. Vendor agrees to assume responsibility for informing all such individuals in accordance with applicable law and to indemnify and hold harmless the Commonwealth of Virginia, James Madison University and its officers and employees from and against any claims, damages or other harm related to such breach.

9. The Contractor shall be responsible and liable for the acts and omissions of its subcontractors, including but not limited to third-party cloud hosting providers, and shall assure compliance with the requirements of the Contract.
10. Contractor has disclosed all potential fees. Additional charges will not be accepted.
11. General Cooperative Pricing
  - a. QuestionPro pricing model:
    - i. University Enterprise License- Up to 20,000 Users - \$25,000 USD
    - ii. University Enterprise License- Up to 40,000 Users - \$30,000 USD
    - iii. University Enterprise License- Up to 50,000 Users- \$32,000 USD
  - b. Cooperative enterprise solution in higher education pricing:
    - i. Generic Price Point - \$25,000 to \$35,000 USD



# University Software Policy and License Agreement

## Introduction

QuestionPro provides you with powerful software for conducting online surveys. The central service is an application that offers unique survey creation, distribution over multiple channels, and a comprehensive suite for analyzing your survey results.

Included with the software is the QuestionPro App, a dynamic survey app which offers offline data collection. In addition, QuestionPro Sample offers you access to pre-qualified respondents for your surveys. This document details agreements with respect to QuestionPro, the QuestionPro App, and QuestionPro Sample.

## Proposal Overview

QuestionPro is offering a University-wide license to students, faculty members and staff of the university. The University-wide license will have all the features that come along with our Enterprise annual License.

Each and every account will have all the enterprise features along with full access to our technical support team.

We have many universities around the world that use QuestionPro for academic research. Our versatility, ease of use, and advanced toolset make QuestionPro the best option for colleges and universities of any size.

QuestionPro will also be offering every student, faculty member and staff access to QuestionPro App. (iPad application for offline field surveys).

## Solution

Once the University and QuestionPro agree on the terms of service, the university will have its own unique portal:

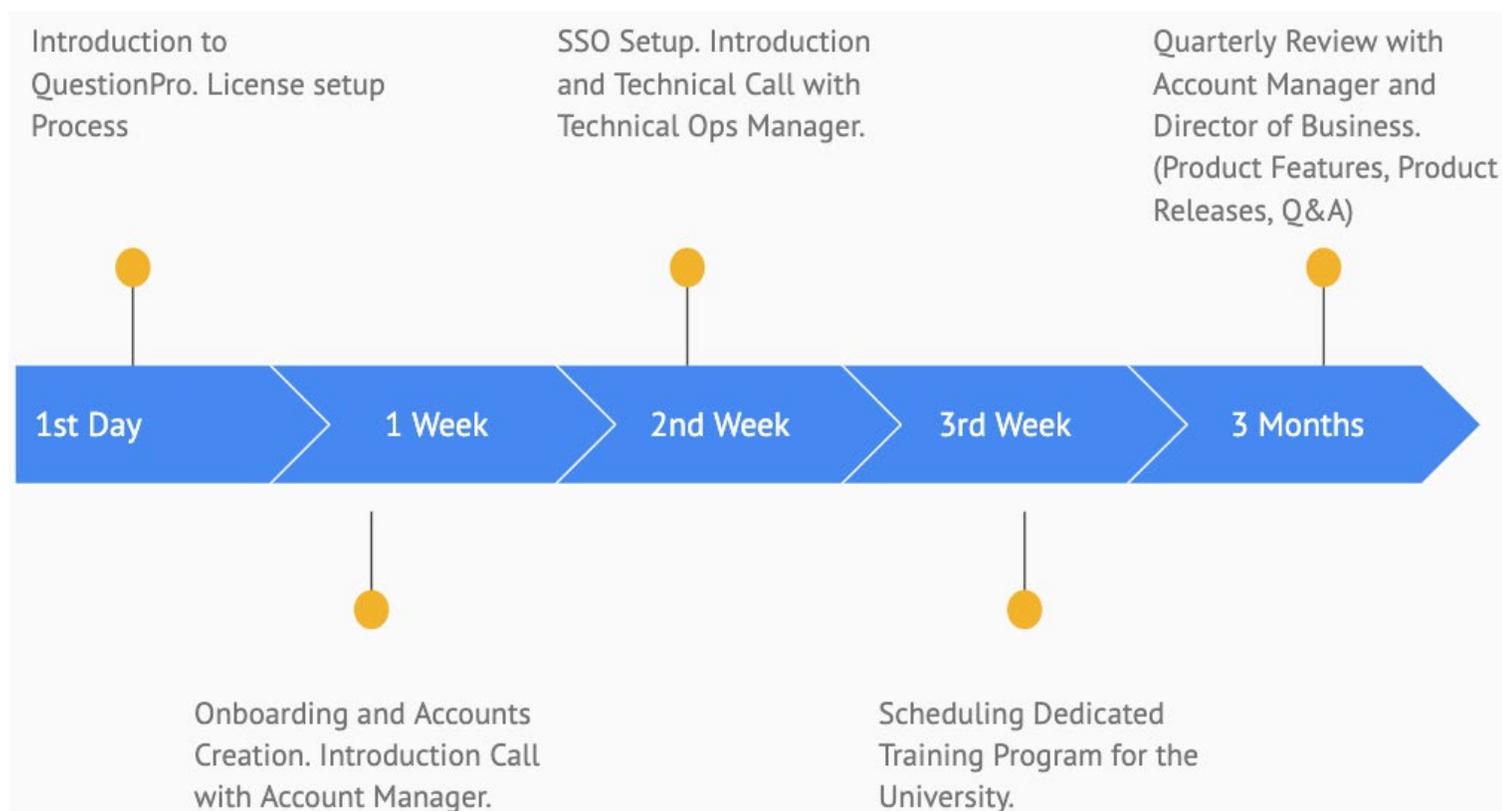
<http://questionpro.com/edu/<name-of-university>>. Students & Faculty members will be able to sign up for their own individual QuestionPro accounts and conduct their own research.

Contact your sales representative with questions:

Harshad Deshpande | [edu@questionpro.com](mailto:edu@questionpro.com) | 1-206-965-8192

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## Onboarding Plan:



### Day 1:

QuestionPro will complete the setup of the License for the Global Administrator account and do the handover of the License on Day 1.

### Week 1:

This will be followed by an introduction to the Question Pro Dedicated Account Manager and the Business Director. QuestionPro will discuss the onboarding procedure for Bulk Creation of accounts for the University. Users can be created by the Account Manager in bulk from the backend. The JMU Global Administrator will also introduce any other administrators within the University. QuestionPro will also discuss the escalation matrix for any Technical Support and Account Support issues and also familiarize JMU Admin with the Chat Support Process.

### Week 2:

JMU Global Administrator will introduce the Technical Point of Contact at James Madison University to the Account Manager and Technical Operations Manager at QuestionPro. The Account Manager will then schedule a Zoom Meeting to discuss the technical aspects to complete the setup with [Single Sign On](#). The Technical Operations Manager will be

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responsible for any further troubleshooting and implementation process working with the Technical Team at James Madison University. This process takes 1 week to complete and test the setup.

### Week 3:

The QuestionPro Account Manager will reach out to schedule and plan the training calendar for the University for a dedicated Online Product Training Program (available to be recorded and published on a University website; trainings are available for multiple bookings, including train-the-trainer vs. general user audiences).

QuestionPro's Comprehensive University Training Program Includes and covers the following topics:

- **Survey Basics:** Get an overview of all the basic functions that QuestionPro provides. Duration: 45 minutes.
- **Survey Logic:** Learn how to design and set up a smart the flow of your survey as per your conditions. Duration: 45 minutes.
- **Survey Distribution:** We will educate you on the various Survey Distribution Options on QuestionPro and best practices to achieve maximum response rates to your Surveys. Duration: 45 minutes.
- **Reporting and Analytics:** Delve into the various Data Analytics and Reporting options in the QuestionPro Platform. Understand various reports in and learn how to tell a story of your Data. Duration: 45 minutes.

### 3 Months:

QuestionPro Account Manager will engage with the Global Administrators for a Quarterly Business Review Meeting. The Agenda of this meeting will include discussion on new feature releases, product feature requests and account summary. This meeting will be conducted every quarter.

### Overview:

- Unlimited Surveys
- Unlimited Responses
- Unlimited Questions on the Surveys
- Offline Surveys
- EU Safe Harbor certified, TRUSTe certified, SSL data encryption
- 24/7 Live Technical Support

## License Details

### Features:

- Unlimited Surveys & Questions
- Unlimited Responses
- 24/7 Email & Chat Support
- Mobile Screen Optimized
- Skip Logic
- Question & Answer Piping

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- Question Randomization
- Theme Customization
- Data Export And Reports
- Global Password Protection
- Offline Data Collection
- Save & Continue
- Schedule Survey Reminders
- Advanced Question Types
- Multilingual Surveys
- Spss Export & Text Analysis
- Data Segmentation
- Panel Integration
- API Integration
- 24/7 Phone Support
- Custom Scripting
- Section-Based Scoring
- Extended Media Support
- Company Branded Login Portal
- Extended Email List Size
- Automated Reports
- Salesforce Integration
- Expert Training
- Premium Support
- Dedicated Account Manager
- Text Analytics
- Cross Tabulations
- Trend Analysis
- Word Clouds
- Infographic Reports
- Email Scheduling
- Action Alerts
- Conjoint Analysis
- Complex Question Types
- Survey Encryption
- Single Sign-On
- Import Data
- Consolidate Report
- Data View & Storage
- Google Analytics

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- Webhooks
- Datacenter Versatility
- HIPAA Compliance

## QuestionPro Privacy Policy:

This Privacy Policy applies to <https://www.questionpro.com> (“QuestionPro”), <https://www.surveyanalytics.com> (“SurveyAnalytics”) owned and operated by QuestionPro. This Privacy Statement describes how <https://www.questionpro.com>, <https://www.surveyanalytics.com> collects and uses the personal information you provide. It also describes the choices available to you regarding the use of, your access to, and how to update and correct your personal information.

QuestionPro Inc complies with the EU-U.S. Privacy Shield Framework and Swiss-U.S. Privacy Shield Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information transferred from the European Union and Switzerland to the United States.

QuestionPro Inc has certified to the Department of Commerce that it adheres to the Privacy Shield Principles. If there is any conflict between the terms in this privacy policy and the Privacy Shield Principles, the Privacy Shield Principles shall govern. To learn more about the Privacy Shield program, and to view our certification, please visit <https://www.privacyshield.gov/>

In compliance with the Privacy Shield Principles, QuestionPro commits to resolve complaints about our collection or use of your personal information.

EU and Swiss individuals with inquiries or complaints regarding our Privacy Shield policy should first contact QuestionPro at:

Erik Koto  
Privacy Compliance Officer  
QuestionPro  
548 Market St #62790  
San Francisco, CA 94104-5401  
Email: [privacy@questionpro.com](mailto:privacy@questionpro.com)

If you have an unresolved privacy or data use concern that we have not addressed satisfactorily, please contact our U.S.-based third party dispute resolution provider (free of charge) at <https://feedback-form.truste.com/watchdog/request>

QuestionPro commits to cooperate with EU data protection authorities (DPAs) and the Swiss Federal Data Protection and Information Commissioner (FDPIC) and comply with the advice given by such authorities with regard to human resources data transferred from the EU and Switzerland in the context of the employment relationship.

QuestionPro self certifies to Privacy Shield. QuestionPro is subject to the investigatory and enforcement powers of the Federal Trade Commission (FTC).

Under Privacy Shield, an individual has the possibility, under certain conditions, to invoke binding arbitration for complaints regarding Privacy Shield compliance not resolved by any of the other Privacy Shield mechanisms.

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QuestionPro will, only after reasonable notification, disclose your personally identifiable information as required by law and when we believe that disclosure is necessary to protect our rights and/or to comply with a judicial proceeding, court order, or similar legal process.

## General Information

This privacy policy applies to the website: [www.questionpro.com](http://www.questionpro.com), [www.surveyanalytics.com](http://www.surveyanalytics.com). This also applies to the QuestionPro service as well as all related products and services. QuestionPro strives to conform its privacy practices, policies and/or procedures with any and all applicable international, country-specific, US Federal, state, and/or local laws, codes, regulations, and requirements, and the industry codes, standards, and regulations of various market and opinion research professional associations and/or organizations, including, without limitation, the ICC/ESOMAR International Code on Market and Social Research and the Code of Standards and Ethics for Survey Research of the Council of American Survey Research Organizations (CASRO). QuestionPro is committed to protecting the security and integrity of all personal information collected by or disclosed to QuestionPro. QuestionPro will not use any personal information for direct marketing or advertising purposes, and membership as a panel member and/or participation in any survey(s) are completely voluntary. This privacy policy identifies the personal information that QuestionPro collects; how such personal information will be used and protected; and your rights.

## INFORMATION COLLECTION AND USE

### Registration

In order to use this Web site, you must first complete the registration form and create a username and password. During registration, you are required to give contact information (including email address). We use this information to contact you about the services on our site in which you have expressed interest. After registering with the site, we use your email address to provide you with a series of “Ongoing Communications and Product Updates” (see “Communication from the Site”). These communications are used to give you a better understanding of the site, what it offers, and how it is best utilized. As always, you have the option not to receive these types of communications (see “Choice and Opt-out” in “Information Sharing and Disclosure”).

### Orders

If you purchase a product or service from us, we request certain personally identifiable information from you on our order form. You must provide contact information (such as name and billing address) and financial information (such as credit card number, expiration date). We use this information for billing purposes. If we have trouble processing an order, we will use this information to contact you. We will also use this information to send you ‘Service-related Communications’ (see ‘Communication from the Site’). These include email confirmations of billing transactions, account upgrades, and account cancellations. Please see “Contact Us” below.

### Profile

We store the information that we collect through user input, cookies, log files, and user surveys to create a “profile” of preferences. This profile information includes each of the following categories:

Registration Information: username, password, first name, last name, email address, phone

Order Information: credit card number, credit card expiration, billing address

Preferences: profile information that categorizes how the software is utilized

Details of the user profile are used to contact the user (see “Communication from the Site”) and to improve the content of the site.

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Profile information may be updated at any time by clicking on the “My Account” link while the user is logged into their administrative account.

## FORWARD TO FRIEND

A respondent may share a survey with other users by providing email addresses after completing the survey. QuestionPro will automatically send a survey link to those addresses and a one-time email that introduces and invites the addressee to the QuestionPro site. We will not share these email addresses with customers or survey administrators and will not send future mailings unless the addressee requests further communication. Any addressee who has requested further communication after having been referred to our site or surveys may contact [support-team@questionpro.com](mailto:support-team@questionpro.com) (or use the “Contact Us” link on our homepage) and request to be removed from the QuestionPro contacts database.

## USES OF INFORMATION

Any information shared with QuestionPro during the creation of a survey is owned solely by the administrator of that survey. By the nature of how our service works, surveys need to be shared via a URL on the Internet. We provide the option to password-protect your surveys if they contain sensitive content. Email addresses uploaded to the system for the purpose of sending survey invitations and email communication are owned solely by the survey administrator. We will never share any information uploaded to the system with any 3rd parties. Data collected through surveys is owned solely by the survey administrator. By default, the data is only accessible by providing a username and password and logging into the site. There is the option to share online reports via a URL from the administrative account. The survey administrator controls this option. We will never use any of the data collected. QuestionPro may collect the Internet protocol address (the IP address) that is publicly available on your computer. The IP address is not collected for the purpose of tracking or monitoring your activity on the Internet. In non-United States jurisdictions, an IP address may be classified as personal information or personal data under applicable laws; therefore, to the extent that QuestionPro collects IP addresses, QuestionPro will collect, use, maintain, secure and/or disclose IP addresses in accordance with applicable Laws.

## COMMUNICATIONS FROM THE SITE

### Ongoing Communication and Product Updates

We will occasionally send you information on product enhancements, new services, and additional instruction on utilizing our services. These communications are designed to educate our users on the services offered. Out of respect for your privacy, we present the option not to receive these types of communications. Please see “Choice and Opt-out” in “Information Sharing and Disclosure.” Service-related Announcements We will send you strictly service-related announcements when it is necessary to do so. For instance, if our service is temporarily suspended for maintenance, we might send you an email. Service-related emails are also sent confirming billing transactions, account upgrades, and account cancellations. Generally, you may not opt-out of these communications, which are not promotional in nature. If you do not wish to receive them, you have the option to cancel your account.

### Customer Service

Based upon the personally identifiable information you provide us, we will send you a welcoming email to verify your username and password as well as an account manager contact information. We will also communicate with you in response to your inquiries, to provide the services you request, and to manage your account.

## INFORMATION SHARING AND DISCLOSURE

### Personally Identifiable Information Sharing with Partners

We do not share any personally identifiable information with any third parties except as indicated below. If a user specifically requests a service from one of our partnering companies, their personally identifying information will be shared. The partnering company may contact them directly regarding their inquiry. Any requests of partnering companies

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are initiated solely by the user, and it will be clearly indicated that a partnering company offers the requested service. We may use the third party research panel providers to provide survey respondents for clients who request online survey panels. When you request access to such an online survey panel, your contact information will be shared with third-party research panel providers as necessary for them to provide that service. Third-party research panel providers are prohibited from using your personally identifiable information for any other purpose. We use a third-party service provider to host chat support on our site. When you request live chat support, your contact information will be stored by the service provider as necessary for it to provide its service. The service provider is prohibited from using your personally identifiable information for any other purpose. We use an outside credit card processing companies to bill you for goods and services. These companies do not retain, share, store or use personally identifiable information for any other purposes.

In certain situations, QuestionPro may be required to disclose personal data in response to lawful requests by public authorities, including to meet national security or law enforcement requirements.

We reserve the right to disclose your personally identifiable information, only after reasonable notification, as required by law and when we believe that disclosure is necessary to protect our rights and/or to comply with a judicial proceeding, court order, or similar legal process. If QuestionPro is involved in a merger, acquisition, or sale of all or a portion of its assets, you will be notified via email and/or a prominent notice on our Web site of any change in ownership or uses of your personally identifiable information, as well as any choices you may have regarding personally identifiable information.

#### CHOICE/OPT-OUT

If you no longer wish to receive our product updates, you may opt out of receiving them by following the instructions included in each product update email. If you are a member of a QuestionPro research panel, you may opt out of membership in our research panels by following instructions included in each survey invitation.

## TRACKING TECHNOLOGIES

As is true of most web sites, we gather certain information automatically and store it in log files. This information may include Internet protocol (IP) addresses, browser type, Internet service provider (ISP), referring/exit pages, operating system, date/time stamp, and/or clickstream data. We do not link this automatically collected data to other information we collect about you. QuestionPro and its partners use cookies or similar technologies to analyze trends, administer the website, track users' movements around the website, and to gather demographic information about our user base as a whole. You can control the use of cookies at the individual browser level, but if you choose to disable cookies, it may limit your use of certain features or functions on our website or service. Our third party partner may use technologies such as cookies or similar technologies to gather information about your activities on this site and other sites in order to provide you advertising based upon your browsing activities and interests. The University categorically opts out of interest-based ad data collection. Please note this does not opt you out of being served ads. You will continue to receive generic ads.

## BULLETIN BOARDS/CHAT ROOMS/ FORUM

If you use a bulletin board or chat room or public forum on this site, you should be aware that any personally identifiable information you submit it here can be read, collected, or used by other users of these forums, and could be used to send you unsolicited messages. We are not responsible for the personally identifiable information you choose to submit in these forums. To request removal of your personal information from our blog or public forum, contact us at [privacy@questionpro.com](mailto:privacy@questionpro.com). In some cases, we may not be able to remove your personal information, in which case we will let you know if we are unable to do so and why.

## TESTIMONIALS

We display personal testimonials of satisfied customers on our site in addition to other endorsements. With your consent, we may post your testimonial along with your name. If you wish to update or delete your testimonial, you can contact us at [privacy@questionpro.com](mailto:privacy@questionpro.com).

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## IMPORT CONTACTS

You can import contacts from your email account address book to invite them to take part in surveys. We collect the username and password for the email account you provide and will only use such information for the purpose of inviting contacts to take part in surveys.

## ACCESS TO PERSONALLY IDENTIFIABLE INFORMATION

Upon request QuestionPro will provide you with information about whether we hold any of your personal information. If your personally identifiable information changes, or if you no longer desire our service, you may update, delete or cancel your account at any time by logging into the system and clicking on the “My Account” link. Options for updating your profile and account cancellations are available. We will respond to your request within a reasonable timeframe.

## DATA RETENTION

We will retain your information for as long as your account is active or as needed to provide you services. We will retain and use your information as necessary to comply with our legal obligations, resolve disputes, and enforce our agreements.

## SECURITY

The security of your personal information is important to us. When you enter sensitive information such as credit card number on our order forms, we encrypt that information using secure socket layer technology (SSL). We follow generally accepted industry standards to protect the personal information submitted to us, both during transmission and once we receive it. No method of transmission over the Internet, or method of electronic storage, is 100% secure, however. Therefore, while we strive to use commercially acceptable means to protect your personal information, we cannot guarantee its absolute security.

## LINKS TO 3RD PARTY SITES

Our Site includes links to other Web sites whose privacy practices may differ from those of QuestionPro. If you submit personally identifiable information to any of those sites, your information is governed by their privacy policies. We encourage you to carefully read the privacy policy of any Web site you visit.

## SOCIAL MEDIA WIDGETS

Our Web site includes Social Media Features, such as the Facebook Like button and Widgets, such as the Share this button or interactive mini-programs that run on our site. These Features may collect your IP address, which page you are visiting on our site, and may set a cookie to enable the Feature to function properly. Social Media Features and Widgets are either hosted by a third party or hosted directly on our Site. Your interactions with these Features are governed by the privacy policy of the company providing it.

## SINGLE SIGN-ON

Accounts will be created/approved by the University Administrator. Single Sign-On environment will be implemented in collaboration with the University’s IT personnel.

## CHANGES IN THIS PRIVACY STATEMENT

If we decide to change our privacy policy, we submit written notice to the University to request a modification to the standing privacy policy in contract UCPJMU5662.

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## THIRD PARTIES AND DATA

We use certain trusted third parties (for example, providers of customer support and IT services) to help us provide, improve, protect, and promote our Services. These third parties will access your information only to perform tasks on our behalf in compliance with this Privacy Policy, and we'll remain responsible for their handling of your information per our instructions. As such, all third parties that QuestionPro works with must be in compliance with our Privacy Policy.

We may disclose your information to third parties, only after reasonable notification, if we determine that such disclosure is reasonably necessary to (a) comply with the law; (b) protect any person from death or serious bodily injury; (c) prevent fraud or abuse of QuestionPro or our users; or (d) protect QuestionPro's property rights.

## CONTACT US

QuestionPro is committed to working with individuals to obtain a fair resolution to any complaints or disputes about privacy and personal information. QuestionPro commitment to privacy is demonstrated and documented by our internal Privacy Compliance Officer, by our adherence to the applicable laws and codes. If you have any complaints or concerns about this privacy policy you can contact:

Erik Koto  
Privacy Compliance Officer  
QuestionPro  
9450 SW Gemini Dr #62790  
Beaverton, OR 97008-7105  
USA  
Email: [privacy@questionpro.com](mailto:privacy@questionpro.com)  
United States of America: +1 (800) 531-0228  
United Kingdom: +44 20 7558 8080  
Australia: +61 2 8005 0459  
Fax: +1 (206) 260-3243

## Terms of use:

Welcome to QuestionPro, Inc. ("QuestionPro," "we," "us," "our") and thank you for using our products and services ("Services"). The following Terms and Conditions of Use ("Terms") govern all use of the Services, so please read carefully.

### 1. Acceptance

The Services are offered subject to your acceptance of these Terms, the negotiated [Privacy Policy](#), and any additional terms and policies (including operating rules, guidelines and procedures) that may apply depending on your particular use of the Services.

If you will be using the Services on behalf of a company or any other entity, you agree to these Terms on behalf of that entity and you represent that you have the authority to do so. In such case, "you" and "your" will refer to that entity. Additionally, since the Services are available only to individuals who are at least 18 years old, you represent and warrant

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that you are at least 18 years old and take full responsibility for the selection and use of the Services. These Terms are void where prohibited by law, and the right to access the Services is revoked in such jurisdictions.

## 2. Registration

In order to use certain features of the Services, you may be required to register for a Services account. You warrant that any registration information (such as name, contact information, or other information) you submit to QuestionPro is accurate, complete, and not misleading, and you agree to keep such information up to date. Failure to do so constitutes a breach of these Terms and may result in immediate termination of your account. To the extent you are able to select a “username,” you may not (i) select or use a username that is a name of another person with the intent to impersonate that person; (ii) use a username that is a name subject to any rights of a person other than you without appropriate authorization; or (iii) use a username that is offensive, vulgar, obscene, or unlawful. We reserve the right, in our sole discretion, to cancel or refuse registration of any username we believe violates these Terms, our policies, or the law. You shall be responsible for maintaining the confidentiality of your password and other account information. Your login must only be used by one person; a single login shared by multiple people is not permitted. QuestionPro is not liable for any loss or damage from your failure to comply with this Section 2. We may use your registration information and any technical information about your use of the Services to tailor its presentations to you, facilitate your movement through the Services, communicate separately with you or publish the fact that you are a user of our services.

## 3. YOUR CONTENT.

As between you and QuestionPro, you retain ownership of the intellectual property rights of the content you submit to us or the Services (“Your Content”), except for the limited rights that enable us to perform the Services. In short, what’s yours is yours, but we do need certain permissions from you so that our processing, maintenance, storage, technical reproduction, back-up, distribution, and related handling of Your Content does not infringe applicable copyright and other laws. Therefore, in order to perform the Services, you grant us a non-exclusive, worldwide, royalty-free, transferable, and irrevocable (for so long as Your Content is stored with us) license to use, reproduce, and display Your Content as reasonably necessary to provide you with the Services. You are responsible for maintaining, protecting, and making backups of Your Content. To the maximum extent permitted by applicable law, we will not be liable for the loss or corruption of Your Content.

## 4. OUR CONTENT.

Using the Services does not give you ownership of any intellectual property rights in the Services. You agree that all QuestionPro content and materials delivered via the Services or otherwise made available by QuestionPro (collectively, “Our Content”) are protected by copyrights, trademarks, service marks, patents, trade secrets, or other proprietary rights and laws. Except as expressly authorized by QuestionPro in writing, you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit, or create derivative works of Our Content. However, you may print or download a reasonable number of copies of Our Content for your own informational purposes; provided, that you retain all copyright and other proprietary notices within the copies. Reproducing, copying, or distributing any of Our Content or QuestionPro design elements for any other purpose is strictly prohibited without our

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express prior written permission. Use of Our Content for any purpose not expressly permitted in these Terms is prohibited. QuestionPro reserves any rights not expressly granted in these Terms.

## 5. USE OF THE SERVICES.

You represent and warrant that (i) your use of the Services will comply with all laws and regulations; (ii) Your Content will not infringe or violate any third-party intellectual property rights or any laws or regulations (including, without limitation, obscenity, defamation, and privacy laws); (iii) if you use the Services on behalf of any third party, you have all necessary authorizations; and (iv) your use of the Services will not conflict with any obligations you have to any third party. We reserve the right, in our sole discretion, to remove, modify, prevent access to, or refuse to display Your Content that we believe violates these Terms, our policies, or the law.

## 6. ACCOUNTS AND FEES.

Payment will be governed by terms as laid out in contract UCPJMU5662 and all of its attachments and any modifications thereof. All Fees will be invoiced in advance (on an annual basis) at the start of each subscription period. Unpaid Fees are subject to a finance charge of 1.5% per month or the maximum permitted by law, whichever is lower, plus all expenses of collection. You shall be responsible for all taxes associated with the Services other than taxes based on QuestionPro's net income. All inquiries related to billing and credit card charges should be made in writing to ATTN: Billing/Invoices, 9450 SW Gemini Dr #62790, Beaverton, OR 97008-7105, USA or can be emailed to [edu@questionpro.com](mailto:edu@questionpro.com) and also available via phone at +1 (800) 531-0228.

## 7. CHANGES TO THE TERMS

We may request to amend these Terms from time to time by submitting written notice to the University to request a modification to the standing terms in contract UCPJMU5662. These Terms may not be amended in any other way except through a written agreement executed by both an authorized representative of the University and an authorized representative of QuestionPro.

## 8. CHANGES TO SERVICES

QuestionPro is constantly innovating and evolving the Services in order to provide the best possible experience for our users. You acknowledge and agree that the form and nature of the Services may change from time to time without notice. Changes to the form and nature of the Services may include, without limitation, the alteration or removal of a functionality or aspect of the Services. You agree that we shall not be liable to you or to any third party for any modification, suspension or discontinuance of any part of the Services. You also agree that we may create limits on certain features and services or restrict your access to parts of the Services without notice or liability. (For example, if you use our Free subscription, you will not enjoy all of the benefits provided to subscribers of the QuestionPro Professional subscription.)

## 9. ANTI-SPAM AND E-MAIL POLICY.

QuestionPro expressly forbids all SPAM (the term "SPAM" meaning the sending of unsolicited e-mail to parties unknown to the sender). If you are found to be using the Services for SPAM, your account will be subject to immediate termination. If we receive complaints about your activities under this Section 9, your account may be subject to immediate termination.

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You will not send e-mail under any company or organization name other than your own company/organization, and you will not send e-mail with fraudulent or misleading header or source information. All e-mail sent through the Services must be expressly for the purpose of collecting data using QuestionPro's online surveys. Sending e-mail through the Services to solicit any actions other than completing QuestionPro surveys is a violation of these Terms. You are fully responsible for the contents of your messages and the consequences of any such messages. We shall have no responsibility or liability for messages or other content that is created by you. You shall not send, post, distribute or disseminate any defamatory, obscene, or otherwise unlawful messages, material or information, including another person's proprietary information (including trademarks, trade secrets, or copyrighted information) without express authorization from the rights holder. QuestionPro will cooperate with legal authorities in releasing names and IP addresses of users who are involved in SPAM or illegal activities.

## 10. OTHER RESTRICTIONS

- You shall not use any “deep-link,” “page-scrape,” “robot,” “spider,” or other automatic device, program, algorithm, or methodology, or any similar or equivalent manual process (i) to access, acquire, copy, or monitor any portion of the Services or Our Content; (ii) to reproduce in any way or circumvent the navigational structure or presentation of the Services or Our Content; or (iii) to obtain or attempt to obtain any materials, documents, or information through any means not purposely made available through the Services. Additionally, you shall not use any device, software, or routine to interfere or attempt to interfere with the proper working of the Services or any transaction being conducted on the Services. We reserve the right to bar any such activity.
- You shall not attempt to gain unauthorized access (i) to any portion or feature of the Services, (ii) to any systems or networks connected to the Services, (iii) to any QuestionPro server, or (iv) to any of the services offered on or through the Services, by hacking, password “mining”, or any other illegitimate means.
- You shall not probe, scan, or test the vulnerability of the Services or any network connected to the Services, nor breach the security or authentication measures on the Services or any network connected to the Services. You shall not reverse look-up, trace, or seek to trace any information on any other user of or visitor to the Services or any other customer of QuestionPro, or exploit the Services or any service or information made available or offered by or through the Services.
- You shall not take any action that imposes an unreasonable or disproportionately large load on the infrastructure of the Services or QuestionPro's systems or networks, or any systems or networks connected to the Services. In the event of such actions, we reserve the right to implement measures to ensure the quality and availability of the Services for all other QuestionPro users.
- You shall not forge headers or otherwise manipulate identifiers in order to disguise the origin of any message or transmittal you send to QuestionPro or send while using the Services. You shall not, in connection with the Services, pretend (e.g. through impersonation) that you are any other individual or entity. For Surveys sent in connection with the Services, you shall not attempt to remove any identifying footer such as "Powered by QuestionPro" or other similar message.
- You shall not abuse or threaten to abuse (verbally, physically, or in writing) any QuestionPro customer, employee, or agent.

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## 11. SERVICE LEVELS

The following services levels and this Section 11 apply to you only if you are an Enterprise Client user:

- If you are a paying user, are not in breach of this Agreement, and are not delinquent with respect to any Fees, QuestionPro will use commercially reasonable efforts to make the Services available to you with an Uptime Percentage (defined below) of at least 99.5% during the course of the Uptime Calculation Period (defined below). Our calculation of uptime shall be definitive and final. In the event we determine that we did not meet the uptime commitment, as your sole remedy and QuestionPro's exclusive liability, you will be eligible to receive a credit for an additional month of Services.
- "Unavailable" means that your Services have no external connectivity during a 5-minute period.
- "Uptime Percentage" is calculated by subtracting from 100% the percentage of 5-minute periods during the Uptime Calculation Period that the Services were in an Unavailable state, excluding downtime resulting directly or indirectly from Service Level Exclusions.
- "Service Level Exclusions" are downtimes that shall not be deducted when calculating an Uptime Percentage; the Service Level Exclusions are as follows: (i) downtime caused by factors outside of our reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of QuestionPro servers; (ii) downtime that results from any actions or inactions by you or any third party; (iii) downtime as a result of regular maintenance or patch builds; (iv) downtime as a result of significant upgrades or significant maintenance to QuestionPro software for which we have given notice; (v) downtime arising from our suspension and termination of your right to use the Services in accordance with these Terms or our policies.
- "Uptime Calculation Period" is the 365-day period immediately preceding the date you make a confirmed claim via e-mail to your account manager. If you have been using the Services for less than 365 days, the Uptime Calculation Period will still be deemed the preceding 365 days, but any days prior to you becoming a paying user will be deemed to have had 100% availability. Any downtime occurring prior to a successful service credit claim cannot be used for future claims.
- Any claim must be received by your account manager within 30 days after a complained of Unavailability incident. The claim must include (i) the text "SLA CLAIM" in the subject line, (ii) the dates and times of each Unavailability incident being claimed, and (iii) logs or documentation that corroborate your claimed Unavailability incidents.

## 12. THIRD PARTY SITES

The Services may allow you to link to other websites or resources on the Internet, and other websites or resources may contain links to the QuestionPro website and our Services. These other websites are not under our control, and you acknowledge that QuestionPro is not responsible or liable for the content, functions, accuracy, legality, appropriateness or any other aspect of these websites or resources. The inclusion of any such link does not imply endorsement by QuestionPro. You further acknowledge and agree that we shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any content, goods, information, or services available on or through any such website or resource.

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## 13. INDEMNIFICATION

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## 14. WARRANTY DISCLAIMER

THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. QuestionPro MAKES NO WARRANTY THAT (I) THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, (II) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, OR (III) THE RESULTS OF USING THE SERVICES WILL MEET YOUR REQUIREMENTS. SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF IMPLIED WARRANTIES. IN SUCH JURISDICTIONS, THE FOREGOING DISCLAIMERS MAY NOT APPLY TO YOU INsofar AS THEY RELATE TO IMPLIED WARRANTIES.

## 15. LIMITATION OF LIABILITY

IN NO EVENT SHALL QuestionPro, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, VENDORS OR SUPPLIERS BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL THEORY WITH RESPECT TO THE SERVICES (OR ANY CONTENT OR INFORMATION AVAILABLE THROUGH THE SERVICES): (I) FOR ANY LOST PROFITS OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, EVEN IF FORESEEABLE, (II) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGIN), (III) FOR ANY ERRORS OR OMISSIONS IN ANY CONTENT OR INFORMATION OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF YOUR USE OF ANY CONTENT OR INFORMATION POSTED, E-MAILED, TRANSMITTED OR OTHERWISE MADE AVAILABLE AT OR THROUGH THE SERVICES, OR (IV) FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) US\$500.00. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## 16. TERMINATION BY YOU

You can cancel your account at any time by clicking on the "My Account" link in the global navigation bar at the top of the screen. The account screen provides a simple cancellation link. No other form of cancellation (such as phone or e-mail) will be valid. If you cancel the Services before the end of your current subscription period, the cancellation will take effect immediately, and Your Content will be immediately deleted from the Services. You will not be charged for any subsequent subscription periods. For clarity, amounts paid are non-refundable and if your account is canceled in the middle of a subscription period, you forfeit all amounts paid.

## 17. TERMINATION BY US

We may restrict, suspend, or terminate the Services to you (i) if you fail to comply with these Terms or our policies (including without limitation, failure to pay any fees owed by you in relation to the Services) (ii) if you use the Services in a way that creates or could create liability for us, (iii) if you interfere with other's use of the Services, (iv) if a law enforcement, judicial body, or other government agency requests us to do so, or (v) if we need to investigate suspected

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misconduct by you. Any such restriction, suspension, or termination shall be made by us in our sole discretion, and we will not be responsible to you or any third party for any damages that may result or arise out of such restriction, suspension, or termination of your account and/or access to the Services. In the event of an urgent matter, we reserve the right to take immediate action without notice, and follow up in writing with the University Administrator. Additionally, unless you are a paying user, we reserve the right to terminate and delete your account if you have not accessed the Services for a period of 365 days or longer.

## 18. EFFECT OF TERMINATION

Upon termination by either you or QuestionPro, (i) all of Your Content will be immediately deleted from the Services, (ii) you will no longer access (or attempt to access) the Services, (iii) all outstanding fees owed to QuestionPro will become immediately due and payable, and (iv) we shall have no obligation to retain any of Your Content. You are solely responsible for exporting Your Content from the Services prior to termination of the Services you receive. All provisions of these Terms that by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, and limitations of liability.

## 19. EXPORT AND TRADE CONTROLS.

You agree not to import, export, re-export, or transfer, directly or indirectly, any part of the Services or any information provided on or through the Services except in full compliance with all United States, foreign and other applicable laws and regulations.

## 20. ELECTRONIC COMMUNICATIONS AND NOTICES.

By creating an account, you hereby consent to receive electronic communications from us, including marketing e-mails, product updates, and other business messages. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. Electronic communications may be in the form of e-mails sent by us to the e-mail address associated with your account or communications posted by us on the QuestionPro website, your “My Account” page, or the Services you utilize. We save all communication (chats, emails, and calls) between QuestionPro representatives and you for record-keeping, training and quality-assurance purposes.

All notices to QuestionPro must be addressed in writing to: QuestionPro, Inc., 9450 SW Gemini Dr #62790, Beaverton, OR 97008-7105, USA. QuestionPro may provide notices to you via the e-mail address associated with your account or through your Services account.

## 21. RESOLVING DISPUTES

We want to ensure that you have an excellent experience with QuestionPro. If you have a problem or concern, we encourage you to first contact your account manager or Live Chat support to try to resolve any issues. However, in the event of formal proceedings, you and QuestionPro agree that these Terms shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. If you are a federal, state, or local government entity in the United States using the Services in your official capacity and legally unable to accept the controlling law, jurisdiction or venue provisions above, then those provisions do not apply to you. For such U.S. federal government entities, these Terms

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and any action related thereto will be governed by the laws of the United States of America (without reference to conflict of laws) and, in the absence of federal law and to the extent permitted under federal law, the laws of the State of Washington (excluding choice of law).

## 22. MISCELLANEOUS

The failure of either party to exercise or enforce any right contained in these Terms, is not a waiver of either parties' right to do so later. QuestionPro shall not be liable for any failure to perform its obligations in these Terms where such failure results from any cause beyond QuestionPro's reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation. If any provision of these Terms is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that these Terms shall otherwise remain in full force and effect and enforceable. These Terms are not assignable, transferable, or sublicensable by you, except with our prior written consent. We may transfer, assign, or delegate these Terms and their rights and obligations without consent. Both parties agree that these Terms are pursuant to the contract UCPJMU5662, any attachments or addenda, and modifications agreed upon in writing. No agency, partnership, joint venture, or employment is created as a result of these Terms and you do not have any authority of any kind to bind QuestionPro in any respect whatsoever.

**QuestionPro Inc**

**James Madison University**



(signature)

(signature)

Harshad Deshpande

Colleen Johnson

(name typed or printed)

(name typed or printed)

21<sup>st</sup> August 2019

12/5/19

(date)

(date)

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## ATTACHMENT D

### James Madison University Information Technology Services Addendum

CONTRACTOR NAME: QuestionPro Inc.

PRODUCT/SOLUTION: Online Enterprise Survey Software

#### Definitions:

- **Agreement:** The "Agreement" includes the contract, this addendum and any additional addenda and attachments to the contract, including the Contractor's Form.
  - **University:** "University" or "the University" means James Madison University, its trustees, officers and employees.
  - **University Data:** "University Data" is defined as any data that the Contractor creates, obtains, accesses, transmits, maintains, uses, processes, stores or disposes of in performance of the Agreement. It includes all Personally Identifiable Information and other information that is not intentionally made generally available by the University on public websites.
  - **Personally Identifiable Information:** "Personally Identifiable Information" (PII) includes but is not limited to: Any information that directly relates to an individual and is reasonably likely to enable identification of that individual or information that is defined as PII and subject to protection by James Madison University under federal or Commonwealth of Virginia law.
  - **Security Breach:** "Security Breach" means a security-relevant event in which the security of a system or procedure involving University Data is breached, and in which University Data is exposed to unauthorized disclosure, access, alteration, or use.
  - **Service(s):** "Service" or "Services" means any goods or services acquired by the University from the Contractor.
1. **Rights and License in and to University Data:** The parties agree that as between them, all rights including all intellectual property rights in and to University Data shall remain the exclusive property of the University, and Contractor has a limited, nonexclusive license to use the data as provided in the Agreement solely for the purpose of performing its obligations hereunder.
  2. **Nonvisual Access To Technology:** All information technology which, pursuant to the Agreement, is purchased or upgraded by or for the use of any Commonwealth agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. If requested, the Contractor must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. The requirements of this Paragraph along with the Non-Visual Access to Technology Clause shall be construed to achieve full compliance with the Information Technology Access Act, §§2.2-3500 through 2.2-3504 of the Code of Virginia. Compliance may be determined by the degree to which the product meets the recommendations described in the VPAT (Voluntary Product Accessibility Template) and/or WCAG 2.0 Level AA guidelines.
1. **Data Privacy:**
    - a. Contractor will use University Data only for the purpose of fulfilling its duties under the Agreement and will not share such data with or disclose it to any third party without the prior written consent of the University, except as required by the Agreement or as otherwise required by law.
    - b. University Data will not be stored outside the United States without prior written consent from the University.

- c. Contractor will provide access to University Data only to its employees and subcontractors who need to access the data to fulfill obligations under the Agreement. The Contractor will ensure that the Contractor's employees, and subcontractors when applicable, who perform work under the Agreement have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of the Agreement.
  - i. If the Contractor will have access to the records protected by the Family Educational Rights and Privacy Act (FERPA), Contractor acknowledges that for the purposes of the Agreement it will be designated as a "school official" with "legitimate educational interests" in such records, as those terms have been defined under FERPA and its implementing regulations, and Contractor agrees to abide by the limitations and requirements imposed on school officials. Contractor will use such records only for the purpose of fulfilling its duties under the Agreement for University's and its End Users' benefit, and will not share such data with or disclose it to any third party except as provided for in the Agreement, required by law, or authorized in writing by the University. Contractor acknowledges that its access to such records is limited to only those directly related to and necessary for the completion of Contractor's duties under the Agreement.

**2. Data Security:**

- a. Contractor will store and process University Data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure Contractor's own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved.
- b. Contractor will store and process University Data in a secure site and will provide a SAS 70, SAS 70 Type II, SSAE 16, or SOC 2, or other security report deemed sufficient by the University, from a third party reviewer along with annual updated security reports. If the Contractor is using a third-party cloud hosting company such as AWS, Rackspace, etc., the Contractor will obtain the security audit report from their hosting company and give the results to the University. The University should not have to request the report directly from the hosting company, or sign a nondisclosure agreement to receive it.
- c. Contractor will use industry-standards and up-to-date security tools, technologies and practices such as network firewalls, anti-virus, vulnerability scans, system logging, intrusion detection, 24x7 system monitoring and third-party penetration testing in providing services under the Agreement.
- d. Without limiting the foregoing, Contractor warrants that all electronic University Data will be encrypted in transmission (including via web interface) and stored at AES 256 or stronger.

**3. Data Authenticity, Integrity and Availability:**

- a. Contractor will take reasonable measures, including audit trails, to protect University Data against deterioration or degradation of data quality and authenticity. Contractor shall be responsible for ensuring that University Data, per the Virginia Public Records Act, "is preserved, maintained, and accessible throughout their lifecycle, including converting and migrating electronic data as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration."
- b. Contractor will ensure backups are successfully completed at the agreed interval and that restoration capability is maintained for restoration to a point-in-time and/or to the most current backup available.

- c. Contractor will maintain an uptime of 99.99% or greater, or as negotiated and accepted by the University, as agreed to for the contracted services via the use of appropriate redundancy, continuity of operations and disaster recovery planning and implementations, excluding regularly scheduled maintenance time.

**4. Employee Qualifications:**

- a. Contractor shall ensure that its employees have undergone appropriate background screening and possess all needed qualifications to comply with the terms of the Agreement including but not limited to all terms relating to data and intellectual property protection.

**5. Security Breach:**

- a. **Response.** Immediately (within one day) upon becoming aware of a Security Breach, or of circumstances that could have resulted in unauthorized access to or disclosure or use of University Data, Contractor will notify the University, fully investigate the incident, and cooperate fully with the University's investigation of and response to the incident. Except as otherwise required by law, Contractor will not provide notice of the incident directly to individuals whose Personally Identifiable Information was involved, regulatory agencies, or other entities, without prior written permission from the University.
- b. **Liability.** In addition to any other remedies available to the University under law or equity, when applicable to the type of services being provided, Contractor will pay for or reimburse the University in full for all costs incurred by the University in investigation and remediation of such Security Breach, including but not limited to providing notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities as required by law or contract; providing one year's credit monitoring to the affected individuals if the Personally Identifiable Information exposed during the breach could be used to commit financial identity theft; and the payment of legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners as a result of the Security Breach. Contractor agrees to indemnify, hold harmless and defend the University from and against any and all claims, damages, or other harm related to such Security Breach.

**6. Requests for Data, Response to Legal Orders or Demands for Data:**

- a. Except as otherwise expressly prohibited by law, Contractor will:
  - i. immediately notify the University of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking University Data;
  - ii. consult with the University regarding its response;
  - iii. cooperate with the University's requests in connection with efforts by the University to intervene and quash or modify the legal order, demand or request; and
  - iv. Upon the University's request, provide the University with a copy of its response.
- b. Contractor will make itself and any employees, contractors, or agents assisting in the performance of its obligations under the Agreement, available to the University at no cost to the University based upon claimed violation of any laws relating to security and/or privacy of the data that arises out of the Agreement. This shall include any data preservation or eDiscovery required by the University.

- c. The University may request and obtain access to University Data and related logs at any time for any reason and at no extra cost.

**7. Data Transfer Upon Termination or Expiration:**

- a. Contractor's obligations to protect University Data shall survive termination of the Agreement until all University Data has been returned or Securely Destroyed, meaning taking actions that render data written on media unrecoverable by both ordinary and extraordinary means.
- b. Upon termination or expiration of the Agreement, Contractor will ensure that all University Data are securely transferred, returned or destroyed as directed by the University in its sole discretion within 30 days of termination of the Agreement. Transfer/migration to the University or a third party designated by the University shall occur without significant interruption in service. Contractor shall ensure that such transfer/migration uses facilities, methods, and data formats that are accessible and compatible with the relevant systems of the University or its transferee, and to the extent technologically feasible, that the University will have reasonable access to University Data during the transition.
- c. In the event that the University requests destruction of its data, Contractor agrees to Securely Destroy all data in its possession and in the possession of any subcontractors or agents to which Contractor might have transferred University data. Contractor agrees to provide documentation of data destruction to the University and to complete any required Commonwealth of Virginia documentation regarding the destruction of University Data.
- d. Contractor will notify the University of impending cessation of its business and any contingency plans. This includes immediate transfer of any previously escrowed assets and data and providing the University access to Contractor's facilities to remove and destroy University-owned assets and data. Contractor shall implement its exit plan and take all necessary actions to ensure a smooth transition of service with minimal disruption to the University. The Contractor will also provide a full inventory and configuration of servers, routers, other hardware, and software involved in service delivery along with supporting documentation, indicating which if any of these are owned by or dedicated to the University. Contractor will work closely with its successor to ensure a successful transition to the new equipment, with minimal downtime and effect on the University, all such work to be coordinated and performed in advance of the formal, final transition date.

**8. Audits:**

- a. The University reserves the right in its sole discretion to perform audits of Contractor at no additional cost to the University to ensure compliance with the terms of the Agreement. Contractor shall reasonably cooperate in the performance of such audits. This provision applies to all agreements under which Contractor must create, obtain, transmit, use, maintain, process, or dispose of University Data.
- b. If Contractor must under the agreement create, obtain, transmit, use, maintain, process, or dispose of the subset of University Data known as Personally Identifiable Information or financial or business data, Contractor will at its expense conduct or have conducted at least annually a(n):
  - i. American Institute of CPAs Service Organization Controls (SOC) Type II audit, or other security audit with audit objectives deemed sufficient by the University,

which attests to Contractor's security policies, procedures and controls. Contractor shall also submit such documentation for any third-party cloud hosting provider(s) they may use (e.g. AWS, Rackspace, Azure, etc.) and for all subservice provider(s) or business partners relevant to this contract. Contractor shall also provide James Madison University with a designated point of contact for the SOC report(s) and risks related to the contract. This person shall address issues raised in the SOC report(s) of the Contractor and its relevant providers and partners, and respond to any follow up questions posed by the university in relation to technology systems, infrastructure, or information security concerns related to the contract. All documentation shall be provided free of charge and submitted to [IT-Assessments@jmu.edu](mailto:IT-Assessments@jmu.edu). The Contractor shall provide the SOC II report(s) and other necessary documentation annually 90 days prior to the contract anniversary date. The University should not have to request the SOC II reports or other assessment documents or sign a nondisclosure agreement.

- ii. vulnerability scan, performed by a scanner approved by the University, of Contractor's electronic systems and facilities that are used in any way to deliver electronic services under the Agreement; and
  - iii. formal penetration test, performed by a process and qualified personnel approved by the University, of Contractor's electronic systems and facilities that are used in any way to deliver electronic services under the Agreement.
- c. Additionally, Contractor will provide the University upon request the results of the above audits, scans and tests, and will promptly modify its security measures as needed based on those results in order to meet its obligations under the Agreement.

**9. Compliance:**

- a. Contractor will comply with all applicable laws and industry standards in performing services under the Agreement. Any Contractor personnel visiting the University's facilities will comply with all applicable University policies regarding access to, use of, and conduct within such facilities. The University will provide copies of such policies to Contractor upon request.
  - b. Contractor warrants that the service it will provide to the University is fully compliant with and will enable the University to be compliant with relevant requirements of all laws, regulation, and guidance applicable to the University and/or Contractor, including but not limited to: the Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH), Gramm-Leach-Bliley Financial Modernization Act (GLB), Payment Card Industry Data Security Standards (PCI-DSS), Americans with Disabilities Act (ADA).
10. **No End User Agreements:** Any agreements or understandings, whether electronic, click through, verbal or in writing, between Contractor and University employees or other end users under the Agreement that conflict with the terms of the Agreement, including but not limited to this Addendum, shall not be valid or binding on the University or any such end users.

***To the extent allowed by Virginia law, James Madison University will keep any information provided in a security audit report confidential to protect the integrity of the Contractor.***

IN WITNESS WHEREOF, the parties have caused this addendum to be duly executed, intending thereby to be legally bound.

**JAMES MADISON UNIVERSITY**

SIGNATURE:   
PRINTED  
NAME: Colleen Johnson  
TITLE: Buyer Specialist  
DATE: 8/22/2019

**QuestionPro INC.**

SIGNATURE:   
PRINTED  
NAME: Vivek Bhaskaran  
TITLE: CEO  
DATE: 7th January 2019

*Last approved by James Madison University Information Technology, CIO and ISO, on May 30, 2018*

***RETURN OF THIS PAGE IS REQUIRED***

**COMMONWEALTH OF VIRGINIA AGENCY  
CONTRACT FORM ADDENDUM TO CONTRACTOR'S FORM**

**AGENCY NAME:**        James Madison University

**CONTRACTOR NAME:**        Question Pro

**DATE:**                7/9/19

The Commonwealth and the Contractor are this day entering into a contract and, for their mutual convenience, the parties are using the standard form agreement provided by the Contractor. This addendum, duly executed by the parties, is attached to and hereby made a part of the contract. In the event that the Vendor enters into terms of use agreements or other agreements of understanding with University employees and students (whether electronic, click-through, verbal, or in writing), the terms and conditions of this Agreement shall prevail.

The Contractor represents and warrants that it is a(n) // individual proprietorship // association // partnership // **corporation** // governmental agency or authority authorized to do in Virginia the business provided for in this contract. (Check the appropriate box.)

Notwithstanding anything in the Contractor's form to which this Addendum is attached, the payments to be made by the Commonwealth for all goods, services and other deliverables under this contract shall not exceed Purchase Order Amounts; payments will be made only upon receipt of a proper invoice, detailing the goods/services provided and submitted to James Madison University. The total cumulative liability of the Commonwealth, its officers, employees and agents in connection with this contract or in connection with any goods, services, actions or omissions relating to the contract, shall not under any circumstance exceed payment of the above maximum purchase price plus liability for an additional amount equal to such maximum purchase price. In its performance under this contract, the Contractor acts and will act as an independent contractor, and not as an agent or employee of the Commonwealth.

The Contractor's form contract is, with the exceptions noted herein, acceptable to the Commonwealth. Nonetheless, because certain standard clauses that may appear in the Contractor's form agreement cannot be accepted by the Commonwealth, and in consideration of the convenience of using that form, and this form, without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that, notwithstanding any provisions appearing in the attached Contractor's form contract, none of the following paragraphs 1 through 18 shall have any effect or be enforceable against the Commonwealth:

1. **Requiring the Commonwealth to maintain any type of insurance either for the Commonwealth's benefit or for the contractor's benefit;**
2. **Renewing or extending the agreement beyond the initial term or automatically continuing the contract period from term to term;**
3. **Requiring or stating that the terms of the attached Contractor's form agreement shall prevail over the terms of this addendum in the event of conflict;**
4. **Requiring the Commonwealth to indemnify or to hold harmless the Contractor for any act or omission;**
5. **Imposing interest charges contrary to that specified by the Code of Virginia, §2.2-4347 through 2.2-4354, Prompt Payment;**
6. **Requiring the application of the law of any state other than Virginia in interpreting or enforcing the contract or requiring or permitting that any dispute under the contract be resolved in the courts of any state other than Virginia;**
7. **Requiring any total or partial compensation or payment for lost profit or liquidated damages by the Commonwealth if the contract is terminated before its ordinary period;**
8. **Requiring that the contract be "accepted" or endorsed by the home office or by any other officer subsequent**

to execution by an official of the Commonwealth before the contract is considered in effect;

9. Delaying the acceptance of this contract or its effective date beyond the date of execution;
10. Limiting or adding to the time period within which claims can be made or actions can be brought;
11. Limiting the liability of the Contractor for property damage or personal injury;
12. Permitting unilateral modification of this contract by the Contractor;
13. Binding the Commonwealth to any arbitration or to the decision of any arbitration board, commission, panel or other entity;
14. Obligating the Commonwealth to pay costs of collection or attorney's fees;
15. Granting the Contractor a security interest in property of the Commonwealth;
16. Bestowing any right or incurring any obligation that is beyond the duly granted authority of the undersigned agency representative to bestow or incur on behalf of the Commonwealth.
17. Requiring the "confidentiality" of the agreement, in whole or part, without (i) invoking the protection of Section 2.2-4342F of the Code of Virginia in writing prior to signing the agreement (ii) identifying the data or other materials to be protected, and (iii) stating the reasons why protection is necessary.
18. Requiring the Commonwealth to reimburse for travel and living expenses in excess of the agency policy located at <https://www.jmu.edu/financemanual/procedures/4215mie.shtml>

This contract may be renewed annually by the Commonwealth after the expiration of the initial term under the terms and conditions of the original contract except as noted herein. If the Commonwealth elects to exercise the option to renew the contract for an additional renewal period, the contract price(s) for the succeeding renewal period shall not exceed the contract price(s) of the previous contract term increased/decreased by no more than the percentage increase/decrease of the "Other Services" category of the CPI-W of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

**NONVISUAL ACCESS TO TECHNOLOGY:** All information technology which, pursuant to this agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this agreement:

- (i) effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
- (ii) the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the technology interacts;
- (iii) Nonvisual Access Technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
- (iv) the Technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying

operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, §§ 2.2-3500 through 2.2-3504 of the *Code of Virginia*.

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any Commonwealth agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. If requested, the Contractor must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. The requirements of this Paragraph along with the Non-Visual Access to Technology Clause shall be construed to achieve full compliance with the Information Technology Access Act, §§2.2-3500 through 2.2-3504 of the Code of Virginia.

This Agency contract consisting of this Agency addendum and the attached Contractor's form contract constitute the entire agreement between the parties and may not be waived or modified except by written agreement between the parties.

This contract has been reviewed by staff of the agency. Its substantive terms are appropriate to the needs of the agency and sufficient funds have been allocated for its performance by the agency. This contract is subject to appropriations by the Virginia General Assembly.

**IN WITNESS WHEREOF, the parties have caused this contract to be duly executed, intending thereby to be legally bound.**

**AGENCY by**

**CONTRACTOR by QuestionPro Inc.**

**Title** Buyer Specialist

**Title:** Director



**Printed Name** Colleen Johnson

**Printed Name** Harshad Deshpande

**Date:** 7/17/19

**Date:** 10th July 2019

*April 2017*



# Request for Proposal

## RFP# CMJ-1032

**Web Survey Application**

**November 28, 2018**

**NOTE: James Madison University will be closed for winter break from  
Wednesday, December 19, 2018  
until  
Wednesday, January 2, 2019**



**REQUEST FOR PROPOSAL**  
**RFP# CMJ-1032**

**Issue Date:** November 28, 2018  
**Title:** Web Survey Application  
**Issuing Agency:** Commonwealth of Virginia  
James Madison University  
Procurement Services MSC 5720  
752 Ott Street, Wine Price Building  
First Floor, Suite 1023  
Harrisonburg, VA 22807

**Period of Contract: From Date of Award Through One Year (Renewable)**

**Sealed Proposals Will Be Received Until 2:00 PM on January 9, 2019 for Furnishing The Services Described Herein.**

*SEALED PROPOSALS MAY BE MAILED, EXPRESS MAILED, OR HAND DELIVERED DIRECTLY TO THE ISSUING AGENCY SHOWN ABOVE.*

All Inquiries For Information And Clarification Should Be Directed To: Colleen Johnson, Buyer Specialist, Procurement Services, johns9cm@jmu.edu; 540-568-3137; (Fax) 540-568-7935 not later than five business days before the proposal closing date.

**NOTE: THE SIGNED PROPOSAL AND ALL ATTACHMENTS SHALL BE RETURNED.**

In compliance with this Request for Proposal and to all the conditions imposed herein, the undersigned offers and agrees to furnish the goods/services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation.

Name and Address of Firm:

<p>QuestionPro Inc. _____ 9450 SW Gemini Dr #62790 _____ Beaverton, OR 97008-7105 _____ Date: <u>7th January 2019</u> _____ Web Address: <u>www.questionpro.com</u> _____ Email: <u><a href="mailto:edu@questionpro.com">edu@questionpro.com</a>   <a href="mailto:harshad@questionpro.com">harshad@questionpro.com</a></u> _____</p>	<p>By:  <u>VIVEK BHASKARAN</u> _____ (Signature in Ink) Name: <u>Vivek Bhaskaran</u> _____ (Please Print) Title: <u>CEO</u> _____ Phone: <u>206-965-8192</u> _____ Fax #: <u>+1 (206) 260-3243</u> _____</p>
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ACKNOWLEDGE RECEIPT OF ADDENDUM: #1 \_\_\_\_\_ #2 \_\_\_\_\_ #3 \_\_\_\_\_ #4 \_\_\_\_\_ #5 \_\_\_\_\_ (please initial)

SMALL, WOMAN OR MINORITY OWNED BUSINESS:

YES;  NO; IF YES ⇒⇒  SMALL;  WOMAN;  MINORITY **IF MINORITY**:  AA;  HA;  AsA;  NW;  Micro

# ***REQUEST FOR PROPOSAL***

*RFP # CMJ-1032*

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## I. PURPOSE

The purpose of this Request for Proposal (RFP) is to solicit sealed proposals from qualified sources to enter into a contract to provide a web survey application for James Madison University (JMU), an agency of the Commonwealth of Virginia. Initial contract shall be for one (1) year with an option to renew for nine (9) additional one-year periods.

## II. BACKGROUND

James Madison University (JMU) is a comprehensive public institution in Harrisonburg, Virginia with an enrollment of approximately 21,000 students and 3,000 faculty and staff. There are over 600 individual departments on campus that support seven academic divisions. The University offers over 120 majors, minors, and concentrations. Further information about the University may be found at the following website: <http://www.jmu.edu>.

For the past 10 years, JMU has used Qualtrics (<https://www.qualtrics.com>) as its primary survey creation, delivery, and management tool. During the 2017-2018 academic year, approximately 5800 surveys were deployed that generated over 300k responses. JMU community members use Qualtrics in a number of ways, including:

- **Formal Survey Research:** This research is likely to be grant-funded and/or require IRB approval.
- **Informal Surveys:** Informal surveys may include department/university-wide polls, or class-based research conducted by the instructor and/or students.
- **Tests and Quizzes:** Some instructors use the automatic scoring functionality to deliver online quizzes or tests.
- **Performance Appraisals:** It is common to use the web survey tool to collect feedback that is used in the annual evaluation of administrators and other staff.
- **Software Integrations:** Some JMU community members have used the Qualtrics API (<https://api.qualtrics.com/>) to incorporate its functionality into courseware or other research systems.

In addition to Qualtrics, some JMU community members use Google Forms (<https://www.google.com/forms/about>) to collect information. It is almost certain that other free survey tools are being employed at various places around the university, though none except Qualtrics is actively supported or integrated with single sign on (SSO).

## III. SMALL, WOMAN-OWNED AND MINORITY PARTICIPATION

It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities, and to encourage their participation in State procurement activities. The Commonwealth encourages contractors to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, and other contractual opportunities. Attachment B contains information on reporting spend data with subcontractors.

## IV. STATEMENT OF NEEDS

The Contractor shall have available and be able to demonstrate the use and functions of the following components and/or features of a web survey application. It is expected that any proposed software will already be fully developed, tested, offered publicly for sale and available immediately for installation. For this project, the University is not interested in a custom developed software. Describe in detail the manner in which each item is addressed by the system.

A. Application Functionality:

1. Describe in detail the survey creation process to include the following aspects:

a. Survey question types and features

QuestionPro Supports more than 40 different QuestionTypes from Multiple choice, Slider, Drag and Drop, Matrix Questions, Open Ended , Conjoint , Max Diff, Net Promoter Score, Van Westendrop, Homonculous, Flex Matrix, Drop Down, Image Choosers, Smileys, Rating Scales, File Upload. Likert Scale Questions. All Questions can be edited easily on the Workspace, and its flexible to add any images and videos as well to make the survey much more interactive.

b. Formatting capabilities

QuestionPro allows you to format the text and is also HTML compatible. You can add CSS and HTML code as well to format the Text of the Questions. The WorkSpace is like a MS Word Editor, with options to choose Question Types. It also comes with a Question Library powerd with Artificial Intelligence which automatically predicts answers of Questions while editing the surveys answer options. QuestionPro also gives full CSS Customization to end users to design the look and feel of the surveys. All QuestionPro Surveys are mobile compatible.

c. Response validation

QuestionPro Supports Response validation for Text input or numeric input. You can also validate based on logic.

d. Multimedia (i.e. graphics, audio, video, etc.)

All QuestionPro Surveys supports Images, Videos and GIFS and Audio files. All these files can be added onto the survey using the QuestionPro Media Library.

e. Skip logic and piping

QuestionPro supports various logic options which include:

Skip Logic

Compound Logic

Show/HideQuestion Logic

Show/Hide Answer Logic

Delayed Branching

Piping Text to to pipe text to next Question.

Quota Control

Scoring Logic

f. Question randomization

QuestionPro Supports simple randomization of Questions and also supports Block Randomization.

- g. Version control or ability to retrieve deleted questions.  
NA
  - h. Survey preview  
Survey Preview can be done on different devices as well. (Laptop/Computer View, IPAD View, Mobile View) All QuestionPro surveys are mobile compatible.
  - i. Viewing and responding to a survey via different devices (mobile, tablet, etc.)  
All QuestionPro Surveys can be answered on any Tablet or Mobile Device.
  - j. Embedding surveys in web pages  
QuestionPro gives the user the HTML code which needs to be embedded on the website for the survey embedding.
  - k. Ability to generate customized links for distribution  
QuestionPro allows you to create customized links based for every unique user. This batch can also be exported.
2. Describe how data from an external file may be incorporated into the survey, survey logic, and final data, including file upload.  
QuestionPro supports upto 256 Custom Variables which are data sets which can be imported on the Survey, can be used as hidden variables for data segmentation or can also be used on the Email Template for Survey Invites. Data Stored in any custom variable field in an excel file can be used on any Question on to the survey. The file can be uploaded in a CSV format.
3. Describe in detail the application's ability and process for providing the following email features:

- a. Filtering or sampling of specific respondents  
[Data segmentation](#) is one of the most useful tools when creating online surveys. The process helps your business identify opportunities for growth, target communication toward specific audiences, and reduce costs from having multiple survey campaigns. [QuestionPro](#) has different types of data segmentation grouping options available, including Custom Variable Based and Time Based. Lets look at data segmentation and what it can do for your survey research.

Types of Filtering:

Date  
Custom Variable  
Based on Questions Responses  
Survey Status

- b. Emails sent to non-respondents

QuestionPro allows you to send reminder emails to users who have not responded to the surveys. The reminder emails can also be scheduled to go out at a particular date after the survey launch.

- c. Importing and exporting of email lists  
QuestionPro allows you to import and export Email lists within the account. You can upload unlimited emails in the QuestionPro Survey Account in an excel/csv file. There are no limitations.
  - d. Incorporating hidden fields in an email (i.e. academic level, major, course, etc.)  
QuestionPro gives you access to upto 256 Custom variables which can be used as hidden fields for Data Segmentation within the survey.
4. Describe the application's ability to collect additional data from respondents to include the following items:
- a. Item response time: Possible and recorded.
  - b. Number of mouse clicks: Not possible.
  - c. Survey response time: Possible
  - d. Date and time stamps: Possible
  - e. Tracking of IP addresses: Possible
  - f. Number of completed surveys: Tracked and possible.
  - g. Number of opened but uncompleted surveys: Tracked and possible.
  - h. File upload: QuestionPro allows respondents to upload any Document, PDF, Image and Video files if a File Upload question type is used on the survey.
5. Describe the application's library capabilities to include questions, typical response options, multimedia, and customizations.  
QuestionPro's media library allows users to upload any media like videos, images, gifs, documents etc which can be used on the survey. The images can also be used for customization of look and feel of the survey. We can use them on the survey Questions and also the logo.

Following file formats are allowed on the platform: Image: JPEG, PNG, GIF, WEBP

- Audio: MP3
- Video: MP4, Youtube Videos, Vimeo
- Documents: MS Word, Excel, Powerpoint, Txt, PDF

6. Describe the process for importing and/or exporting surveys created in XML, JSON, or other serialized or text format.

QuestionPro allows users to export data in XML or JSON format through their APIs. The QuestionPro API is organized around [REST](#). We use built-in HTTP features, like HTTP authentication and HTTP verbs, to allow you to interact securely with our API from a client-side web application. [JSON](#) will be returned in all responses from the API, including errors. Refer to this link for more info:  
<https://www.questionpro.com/api/>

7. Describe available survey templates within the application and the process for survey template development. Describe any software wizards for creating specialized surveys. QuestionPro has a vast Survey Template library with more than 300 different templates for different type of Surveys. You can easily choose any particular template and then use them for your survey. Here are some brief categories:

Survey Template Categories  
Customer Surveys  
Human Resources Surveys  
Marketing Surveys  
Industry Surveys  
Community Surveys  
Academic Evaluation Surveys

8. Describe in detail the process for importing and exporting questionnaires and data, including the file types available for import and export. QuestionPro has the ability to import Surveys from Microsoft Word and a Qualtrics QSF file. You can simply upload the QSF file which uploads the survey in QuestionPro within seconds.

The Data can then be exported into the various file formats:

Excel/CSV Raw Data Report  
Power point Charts and Analytics  
Microsoft Word Charts and Analytics  
Microsoft Excel Charts and Analytics  
SPSS  
XML

9. Describe data migration capabilities (see *Section II. Background* for information on survey application currently being used). Demonstrate the process of importing surveys and data from Qualtrics.

QuestionPro is the only platform which has a built in Qualtrics Data Migration Tool. This tool which is a really simple process for all end users to migrate their data from Qualtrics to QuestionPro.

First, We import the Survey Questionnaire by importing the QSF file. The QSF file can be exported from the Qualtrics Account. The file once imported creates the survey Questionnaire.

After importing the QSF, we import the CSV Raw Data File which is exported from the Qualtrics Account. The CSV is mapped to the QSF File imported earlier. The CSV file then successfully imports all the surveys responses to the Survey.

This is the complete two step Data Migration process which is very easy for all end users to do. We have migrated more than 20 Universities in the last 4 months who were using Qualtrics University Wide License to QuestionPro.

10. Describe how the system can be used for test scoring to include the following:
  - a. Subscale scoring: QuestionPro has custom scoring and also section based scoring which helps do scoring based on particular sections on the survey.
  - b. Customized scoring routines: QuestionPro supports various scoring options. It allows you to add custom scoring models, also custom weight scoring.
  - c. Response feedback: Scoring can be used to setup a logic or branching based on a scoring criteria.
11. Describe the application's ability to integrate survey responses with statistical packages such as R, SPSS, and SAS.

QuestionPro allows you to export your Data into a .SAV file which is compatible with SPSS. QuestionPro also gives access to Export Data APIs which can be used for exporting data into R and SAS.
12. Describe the process for inviting others to review results (i.e. public reports).

QuestionPro has a real time report sharing link which can be a Public Report Dashboard which will be accessible through a common URL which can be published. This link can also be password protected.
13. Describe how users can collaborate on all aspects of survey generation, delivery, and analysis.

QuestionPro allows users to Collaboratively do research through Survey Collaboration mode. Any QuestionPro user will be able to give edit, view only or Copy Survey access to any user within the University. Users can then collaboratively work on a particular Research Project. Surveys are shared in folders.
14. Describe any API or systems-integration functionality that is available to typical users (i.e. *not* administrators or people with special elevated privileges).

All End users within the University will have access to API and Systems Integration so as they can integrate with tools like Google Docx etc. They Can also get access to all QuestionPro API's mentioned here: <https://www.questionpro.com/api/>
15. Describe the types of accounts and how they are set up and modified for the following:
  - a. Individuals (typical users, elevated privileges, administrators)

There are generally two levels of accounts. One would be the University Administrative Account and the others would all be End Users or Sub Accounts. The Administrative accounts would have all Elevated Privileges and also User Management and Global Account Management Roles and Permissions.

End users will have access to their individual Enterprise License Sub Account.

- b. Groups/departments (class, research) Users can also create accounts with distribution group email addresses or department email aliases for Class research.

## B. Application Technology:

1. Describe the application security features for data, for each module, and for the system. Describe all row-level security options as well as any field-level encryption available.

### **Security and Survey Authentication and Encryption:**

2. Individual Login: It provides individual credentials for each respondent. This is the first level security.
  - a. [Global Password Protect](#): You could set up a common password for all the respondents. In that way no one other than whom you sent the survey to can respond to the survey.
  - b. [Email / Password](#): Use the respondent email and associate a unique password for each respondent. For example: Email: sylvina.roy@questionpro.com Password: \*\*\*\*
  - c. [Username / Password](#): You can set up a unique username and a password for each respondent. For example: Username: QP126 Password: \*\*\*\*
  - d. [Participant ID](#): You could set up a unique ID for each respondent . For example: It could be a employee ID: 12231
  - e. [Password \(Email detected automatically\)](#): You can define unique passwords for each email address. The system will detect if the password matches the email address the respondent claims to be on the back end. For example: Password: \*\*\*\* [ system will detect that if the password matches sylvina.roy@questionpro.com]
  - f. [Email Invites only](#): The system makes sure that the survey can be taken if there is an invite sent in the respondent's inbox. No other way of taking the survey is permitted.
3. Third Party Social Networks: It involves respondent's third party social network's login credentials to verify authenticity of the respondent. This is second level security.
  - a. Facebook custom App:
  - b. [Facebook Connect](#): You can validate your respondent to log onto their facebook account to take the survey. So once the system verifies that the respondent is legit, only then they can take the survey.
4. Encryptions: For high level security you can use Single sign on for permitting authorization to the respondent to take the survey. It includes development work.
  - a. [SAML \(Single Sign-On\)](#): It is an XML-based open standard data format for exchanging authentication and authorization data between parties, in particular, between an identity provider and a service provider
  - b. [HMAC- SHA1\( Single Sign-On\)](#): Single sign-on (SSO) is a session and user authentication service that permits a user to use one set of login credentials (e.g., name and password) to access multiple applications. On the back end, SSO is helpful for logging user activities as well as monitoring user accounts.
  - c. [DES Encrypted Custom Variables](#): It involves encryption and decryption of custom variables so that it cannot be hacked. It is used for sensitive data.

5. Define what *modifiable*, *customizable* and *configurable* mean for the proposed application.

**Modifiable:** Survey versions are a good example of modifiable options in QuestionPro. You can definitely create different versions of surveys. You can edit surveys which are also live. The user has the ability to modify the survey questions.

**Customizable:** There are certain elements which are customizable within the Product. You can customize the look and feel of the survey themes, the Survey URL can have the University branding as well for example, we can have `jmu.questionpro.com` in the survey URL. The reports can be customized by filters and can be downloaded in various formats.

**Configurable:** Features like setting up the single sign on or integrations with other systems are all configurable options within the Software. We can also configure the University Sign Up Portal which can be setup with custom branding.

6. Describe workflow functionality included with the application and provide a list of any function for which workflow is already built and delivered. .

QuestionPro allows you to setup Logic and Notifications and Action Alerts within the platform. So based on a surveys questions response by the respondent, you can setup a workflow to setup an Email Alert, or Navigate them to another survey, or setup an action alert on QuestionPro. You can have them trigger a ticket, or an email notification based on a criteria which you setup on the workflow to perform an action

### C. Reporting:

1. Describe application approach/strategy for reporting including the approach to ad-hoc reporting for power users as well as the occasional user.

QuestionPro has its own Reports and Analytics Engine which generates various types of reports. All reporting features are accessible to all type of users within the University License whether it be a power user or an occasional user.

All end users can have Automated Dashboard reports and Ad Hoc Reports created in the Dashboard. You can do multi level filtering and data segmentation to export the reports.

2. Describe all reporting tools supported and how they integrate with the product. Specify if application licensing includes any of the products.

QuestionPro provides a wide range of reports:

1. Dashboard Report: QuestionPros Analytics Dashboard gives you a Charts and

Analytics Report of All questions on the survey. Charts can be customized into different type of graphs. You can also view the survey statistics, response timeline and device statistics here. Charts for every question onto the survey are customizable. You can also do different scoring models on each question, which also comes with statistical calculations.

Here are a list of other reports which are available:

- Trend Analysis
- Turf Analysis
- Conjoint Analysis
- Maxdiff Analysis
- Correlation Analysis
- Cross Tabs and Banner Tables
- Gap Analysis
- Data Segmentation
- Survey Comparison Report.
- Consolidated Reporting.
- Text Analysis
- Word Clouds
- Text Keyword Tagging.
- Data Export into various Reporting Formats.
- Response Viewer

3. Provide a list of all reports delivered as part of the base product including a short description of each. Include a sample of several reports for review.

All reporting features are part of the QuestionPro University License:

Here are some of the reports available:

- Dashboard Report:
- Trend Analysis
- Turf Analysis
- Conjoint Analysis
- Maxdiff Analysis
- Correlation Analysis
- Cross Tabs and Banner Tables
- Gap Analysis
- Data Segmentation
- Survey Comparison Report.
- Consolidated Reporting.
- Text Analysis
- Word Clouds
- Text Keyword Tagging.
- Data Export into various Reporting Formats.
- Response Viewer

Sample reports of all types of reports have been attached for review.

4. Describe reporting output formats available.

Reporting output formats are as follows:

- CSV Raw Data Export. Ability to export with responses and also with answer codes.
- PowerPoint Charts and Analytics Export
- Excel Charts and Analytics Export
- Word Charts and Analytics Export
- PDF Dashboard Report Export
- SPSS Export in .Sav File.
- XML Export

#### D. Services:

1. Describe available training options and include a catalog of training offerings (*provide any associated cost in Section X Pricing Schedule*). Response should include differentiation between technical staff and end-user training.

QuestionPro provides on Demand Training webinars which are hosted for Technical Staff and also End User training as per mutual timeframes agreed with the University. These training sessions would be included in the License cost itself.

Any On Site training sessions would be charged separately. Pricing details are mentioned in the Cost inclusions. QuestionPro does provide on Site training sessions which can be planned a week in advance before the training days.

#### E. General:

1. Describe typical implementation timeline and project plan and include examples of previously used project plans.

The typical implementation time line for setup of the License and also setting up SSO is 2 working days. This involves working with the IT team at the University to setup SSO with the QuestionPro Tech Team.

2. Describe how product(s) addresses accessibility to ensure the application is accessible to people with disabilities. Describe testing for adherence to accessibility guidelines and standards. Provide documentation of the testing performed and results of that testing including the Web Accessibility and Template Guide (*WATG located at <https://www.vadsa.org/watg/>*).

QuestionPro is compliant to WATG. Please refer to section 508 documentation on this link: <https://www.questionpro.com/compliance/>

F. Technical:

1. Provide a detailed diagram of the architecture/technical environment proposed for the system. Describe each component, the software running on it, and its purpose. List all communications between components including the protocols, ports, direction, third parties, and whether the communications are encrypted.

Please refer to the technical architecture diagram for more information on this. File has been attached.

2. Describe the toolset from which your application is derived.

Code base is in java, database is mysql, os is fedora (Linux)

3. Describe the client operating system and browser requirements for your toolset. List any additional client-side software required for development/management of your toolset. *Customer can access QuestionPro application using a browser and internet connection, not special set up is required other than this.*
4. Describe any changes to default browser or client security settings. *We support all mainstream browsers. QuestionPro works independent of operating systems and has been tested using the following browsers.*

<i>Browser/Operating System</i>	<i>Version</i>
<b><i>Microsoft Windows</i></b>	
<i>Internet Explorer</i>	<i>Version 11 and higher</i>
<i>Mozilla/Firefox</i>	<i>Version 27 and higher</i>
<i>Google Chrome</i>	<i>22 and higher</i>
<i>Safari</i>	<i>Not Supported</i>
<b><i>Apple</i></b>	
<i>Safari</i>	<i>Version 7 and higher</i>
<i>Safari (Mobile)</i>	<i>Version 5 and higher</i>

5. Describe any functionality loss, installation or upgrade problems, or other difficulties if client applications are run using a standard client user account (*non-administrator*). *QuestionPro guarantees 99.95% to all its users irrespective if they have an administrator account or a standard account.*
6. Describe support for mobile technologies including technology used, distribution method, functionality, integration and development toolset and security. *QuestionPro surveys are all mobile optimized. We handle this optimization from our source code. Depending on a*

*device, our system can ensure a very intuitive survey response. For customers using our offline application for data collection, we use React Native platform for developing it. The offline application is securely developed as per our software development lifecycle. We also provide customer the ability to use our SDK if they wish to integrate our mobile feedback module into their own application.*

7. Describe support for integration with JMU's existing systems listed in the background statement including pricing, availability of APIs, toolkits for creating connectors, available services, etc. Provide a full list of application connectors. Describe any other methods of integration supported. *QuestionPro allows users to integrate their application using our REST API. The api documentation can be found on the below url:<https://www.questionpro.com/api/v2/>*
8. Describe the system enhancements in development that are scheduled for release in the next twelve months. *QuestionPro plans to implement a new survey creation module, enhanced user management dashboard, metadata reporting in the coming 12 months.*

#### G. Security:

1. Describe any communications that are not cryptographically protected (*e.g. non-https, non-ldaps, non-ftps*). *QuestionPro uses encryption at all times. Data in transit is encrypted using TLS1.2 encryption, data at rest is encrypted using AES256 encryption.*
2. Describe all authentication and authorization processes and options both end-user and among component interfaces. Include interoperability with external authentication and authorization sources (*e.g. directories, federations, SSO, two-factor authentication*). Include all pertinent documentation describing interfaces and configuration options. *User access can be enabled using a unique username/password combination. Customer can also choose to use our SSO function which allows a more secure and centralized sign in function.*

## **V. PROPOSAL PREPARATION AND SUBMISSION**

### A. GENERAL INSTRUCTIONS

**To ensure timely and adequate consideration of your proposal, offerors are to limit all contact, whether verbal or written, pertaining to this RFP to the James Madison University Procurement Office for the duration of this Proposal process. Failure to do so may jeopardize further consideration of Offeror's proposal.**

1. RFP Response: In order to be considered for selection, the **Offeror shall submit a complete response to this RFP**; and shall submit to the issuing Purchasing Agency:
  - a. **One (1) original and seven (7) copies** of the entire proposal, INCLUDING ALL ATTACHMENTS. Any proprietary information should be clearly marked in accordance with 3.f. below.
  - b. **One (1) electronic copy in WORD format or searchable PDF (CD or flash drive)** of the entire proposal, INCLUDING ALL ATTACHMENTS. Any proprietary information should be clearly marked in accordance with 3.f. below.

- c. Should the proposal contain **proprietary information**, provide **one (1) redacted hard copy** of the proposal and all attachments with **proprietary portions removed or blacked out**. This copy should be clearly marked “*Redacted Copy*” on the front cover. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable. JMU shall not be responsible for the Contractor’s failure to exclude proprietary information from this redacted copy.

No other distribution of the proposal shall be made by the Offeror.

2. The version of the solicitation issued by JMU Procurement Services, as amended by an addenda, is the mandatory controlling version of the document. Any modification of, or additions to, the solicitation by the Offeror shall not modify the official version of the solicitation issued by JMU Procurement services unless accepted in writing by the University. Such modifications or additions to the solicitation by the Offeror may be cause for rejection of the proposal; however, JMU reserves the right to decide, on a case-by-case basis in its sole discretion, whether to reject such a proposal. If the modification or additions are not identified until after the award of the contract, the controlling version of the solicitation document shall still be the official state form issued by Procurement Services.

### 3. Proposal Preparation

- a. Proposals shall be signed by an authorized representative of the Offeror. All information requested should be submitted. Failure to submit all information requested may result in the purchasing agency requiring prompt submissions of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the purchasing agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
- b. Proposals shall be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.
- c. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, sub letter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and sub letter should be repeated at the top of the next page. The proposal should contain a table of contents which cross references the RFP requirements. Information which the offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at the appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.

- d. As used in this RFP, the terms “must”, “shall”, “should” and “may” identify the criticality of requirements. “Must” and “shall” identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labeled as “should” or “may” are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary. Depending on the overall response to the RFP, some individual “must” and “shall” items may not be fully satisfied, but it is the intent to satisfy most, if not all, “must” and “shall” requirements. The inability of an offeror to satisfy a “must” or “shall” requirement does not automatically remove that offeror from consideration; however, it may seriously affect the overall rating of the offeror’s proposal.
  - e. Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.
  - f. Ownership of all data, materials and documentation originated and prepared for the State pursuant to the RFP shall belong exclusively to the State and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by the offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protection of Section 2.2-4342F of the Code of Virginia, in writing, either before or at the time the data is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret materials submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document, line item prices and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection and return of the proposal.
4. Oral Presentation: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to James Madison University. This provides an opportunity for the Offeror to clarify or elaborate on the proposal. This is a fact-finding and explanation session only and does not include negotiation. James Madison University will schedule the time and location of these presentations. Oral presentations are an option of the University and may or may not be conducted. Therefore, proposals should be complete. Presentations will be scheduled mid- to late-January.

## B. SPECIFIC PROPOSAL INSTRUCTIONS

Proposals should be as thorough and detailed as possible so that James Madison University may properly evaluate your capabilities to provide the required services. Offerors are required to submit the following items as a complete proposal:

1. Return RFP cover sheet and all addenda acknowledgements, if any, signed and filled out as required.
2. Plan and methodology for providing the goods/services as described in Section IV. Statement of Needs of this Request for Proposal.

3. A written narrative statement to include, but not be limited to, the expertise, qualifications, and experience of the firm and resumes of specific personnel to be assigned to perform the work.
4. Offeror Data Sheet, included as *Attachment A* to this RFP.
5. Small Business Subcontracting Plan, included as *Attachment B* to this RFP. Offeror shall provide a Small Business Subcontracting plan which summarizes the planned utilization of Department of Small Business and Supplier Diversity (SBSD)-certified small businesses which include businesses owned by women and minorities, when they have received Department of Small Business and Supplier Diversity (SBSD) small business certification, under the contract to be awarded as a result of this solicitation. This is a requirement for all prime contracts in excess of \$100,000 unless no subcontracting opportunities exist.
6. Identify the amount of sales your company had during the last twelve months with each VASCUPP Member Institution. A list of VASCUPP Members can be found at: [www.VASCUPP.org](http://www.VASCUPP.org).
7. Proposed Cost. See Section X. Pricing Schedule of this Request for Proposal.

## **VI. EVALUATION AND AWARD CRITERIA**

### A. EVALUATION CRITERIA:

Proposals shall be evaluated by James Madison University using the following criteria:

1. Type of products/services offered and suitability for intended purposes
2. Qualifications and experience of Offeror in providing the goods/services
  - o Plans or methodology to be used to perform the services
  - o Utilization of Small, Women-Owned, & Minority (SWaM) Businesses

Allocation of points for evaluation criteria will be published to the eVA solicitation posting prior to the closing date and time.

- B. AWARD: Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but

need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous. Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

## VII. GENERAL TERMS AND CONDITIONS

- A. PURCHASING MANUAL: This solicitation is subject to the provisions of the Commonwealth of Virginia's Purchasing Manual for Institutions of Higher Education and Their Vendors and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is available for review at the purchasing office. In addition, the manual may be accessed electronically at <http://www.jmu.edu/procurement> or a copy can be obtained by calling Procurement Services at (540) 568-3145.
- B. APPLICABLE LAWS AND COURTS: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with applicable federal, state and local laws and regulations.
- C. ANTI-DISCRIMINATION: By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §10 of the Rules Governing Procurement, Chapter 2, Exhibit J, Attachment 1 (available for review at <http://www.jmu.edu/procurement>). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*§6 of the Rules Governing Procurement*).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

- 1. During the performance of this contract, the contractor agrees as follows:
  - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous

places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
  - c. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting these requirements.
2. The contractor will include the provisions of 1. Above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. ETHICS IN PUBLIC CONTRACTING: By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- F. DEBARMENT STATUS: By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. ANTITRUST: By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS RFPs: Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- I. CLARIFICATION OF TERMS: If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the

buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

J. PAYMENT:

1. To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Rules Governing Procurement, Chapter 2, Exhibit J, Attachment 1 § 53; available for review at <http://www.jmu.edu/procurement>*).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:

(1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

- (2) To notify the agency and the subcontractors, in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
2. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
3. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.
- K. PRECEDENCE OF TERMS: Paragraphs A through J of these General Terms and Conditions and the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors, shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- K. QUALIFICATIONS OF OFFERORS: The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- L. TESTING AND INSPECTION: The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- M. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- N. CHANGES TO THE CONTRACT: Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
  2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
    - a. By mutual agreement between the parties in writing; or
    - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
    - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- P. DEFAULT: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- O. INSURANCE: By signing and submitting a proposal under this solicitation, the offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with § 25 of the

Rules Governing Procurement – Chapter 2, Exhibit J, Attachment 1, and 65.2-800 et. Seq. of the Code of Virginia (available for review at <http://www.jmu.edu/procurement>) The offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation: Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirement under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
  2. Employer's Liability: \$100,000
  3. Commercial General Liability: \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
  4. Automobile Liability: \$1,000,000 combined single limit. *(Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle.).*
- R. ANNOUNCEMENT OF AWARD: Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site ([www.eva.virginia.gov](http://www.eva.virginia.gov)) for a minimum of 10 days.
- P. DRUG-FREE WORKPLACE: During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

Q. NONDISCRIMINATION OF CONTRACTORS: An offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

R. eVA BUSINESS TO GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS: The eVA Internet electronic procurement solution, website portal [www.eVA.virginia.gov](http://www.eVA.virginia.gov), streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet procurement solution by completing the free eVA Vendor Registration. All offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the proposal being rejected. Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:

Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:

1. For orders issued July 1, 2014 and after, the Vendor Transaction Fee is:
  - a. Department of Small Business and Supplier Diversity (SBSD) certified Small Businesses: 1% capped at \$500 per order.
  - b. Businesses that are not Department of Small Business and Supplier Diversity (SBSD) certified Small Businesses: 1% capped at \$1,500 per order.
2. For orders issued prior to July 1, 2014 the vendor transaction fees can be found at [www.eVA.virginia.gov](http://www.eVA.virginia.gov).
3. The specified vendor transaction fee will be invoiced by the Commonwealth of Virginia Department of General Services approximately 60 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases/decreases) will be handled through purchase order changes.

V. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the Commonwealth of Virginia shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

S. PRICING CURRENCY: Unless stated otherwise in the solicitation, offerors shall state offered prices in U.S. dollars.

- T. E-VERIFY REQUIREMENT OF ANY CONTRACTOR: Any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with James Madison University to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to any awarded contract.
- U. TAXES: Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

**VIII. SPECIAL TERMS AND CONDITIONS**

- A. AUDIT: The Contractor hereby agrees to retain all books, records, systems, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The Commonwealth of Virginia, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.
- B. CANCELLATION OF CONTRACT: James Madison University reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- C. IDENTIFICATION OF PROPOSAL ENVELOPE: The signed proposal should be returned in a separate envelope or package, sealed and identified as follows:

on:

Name of Offeror	Due Date	Time
Street or Box No.	RFP #	
City, State, Zip Code	RFP Title	

of Purchasing Officer:

The envelope should be addressed as directed on the title page of the solicitation.

The Offeror takes the risk that if the envelope is not marked as described above, it may be inadvertently opened and the information compromised, which may cause the proposal to be disqualified. Proposals may be hand-delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

- D. LATE PROPOSALS: To be considered for selection, proposals must be received by the issuing office by the designated date and hour. The official time used in the receipt of proposals is that time on the automatic time stamp machine in the issuing office. Proposals

received in the issuing office after the date and hour designated are automatically non responsive and will not be considered. The University is not responsible for delays in the delivery of mail by the U.S. Postal Service, private couriers, or the intra university mail system. It is the sole responsibility of the Offeror to ensure that its proposal reaches the issuing office by the designated date and hour.

- E. UNDERSTANDING OF REQUIREMENTS: It is the responsibility of each offeror to inquire about and clarify any requirements of this solicitation that is not understood. The University will not be bound by oral explanations as to the meaning of specifications or language contained in this solicitation. Therefore, all inquiries deemed to be substantive in nature must be in writing and submitted to the responsible buyer in the Procurement Services Office. Offerors must ensure that written inquiries reach the buyer at least five (5) days prior to the time set for receipt of offerors proposals. A copy of all queries and the respective response will be provided in the form of an addendum to all offerors who have indicated an interest in responding to this solicitation. Your signature on your Offer certifies that you fully understand all facets of this solicitation. These questions may be sent by Fax to 540/568-7936 or 540/568-7935.
- F. RENEWAL OF CONTRACT: This contract may be renewed by the Commonwealth for a period of nine (9) successive one year periods under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.
1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by no more than the percentage increase/decrease of the other services category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
  2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the other services category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
- G. SUBMISSION OF INVOICES: All invoices shall be submitted within sixty days of contract term expiration for the initial contract period as well as for each subsequent contract renewal period. Any invoices submitted after the sixty day period will not be processed for payment.
- H. OPERATING VEHICLES ON JAMES MADISON UNIVERSITY CAMPUS: Operating vehicles on sidewalks, plazas, and areas heavily used by pedestrians is prohibited. In the unlikely event a driver should find it necessary to drive on James Madison University sidewalks, plazas, and areas heavily used by pedestrians, the driver must yield to pedestrians. For a complete list of parking regulations, please go to [www.jmu.edu/parking](http://www.jmu.edu/parking); or to acquire a service representative parking permit, contact Parking Services at 540.568.3300. The safety of our students, faculty and staff is of paramount importance to us. Accordingly, violators may be charged.

- I. COOPERATIVE PURCHASING / USE OF AGREEMENT BY THIRD PARTIES: It is the intent of this solicitation and resulting contract(s) to allow for cooperative procurement. Accordingly, any public body, (to include government/state agencies, political subdivisions, etc.), cooperative purchasing organizations, public or private health or educational institutions or any University related foundation and affiliated corporations may access any resulting contract if authorized by the Contractor.

Participation in this cooperative procurement is strictly voluntary. If authorized by the Contractor(s), the resultant contract(s) will be extended to the entities indicated above to purchase goods and services in accordance with contract terms. As a separate contractual relationship, the participating entity will place its own orders directly with the Contractor(s) and shall fully and independently administer its use of the contract(s) to include contractual disputes, invoicing and payments without direct administration from the University. No modification of this contract or execution of a separate agreement is required to participate; however, the participating entity and the Contractor may modify the terms and conditions of this contract to accommodate specific governing laws, regulations, policies, and business goals required by the participating entity. Any such modification will apply solely between the participating entity and the Contractor.

The Contractor will notify the University in writing of any such entities accessing this contract. The Contractor will provide semi-annual usage reports for all entities accessing the contract. The University shall not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by the Contractor to extend the contract. It is understood and agreed that the University is not responsible for the acts or omissions of any entity and will not be considered in default of the contract no matter the circumstances.

Use of this contract(s) does not preclude any participating entity from using other contracts or competitive processes as needed.

- J. SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:

1. It is the goal of the Commonwealth that 42% of its purchases are made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All potential offerors are required to submit a Small Business Subcontracting Plan. Unless the offeror is registered as a Department of Small Business and Supplier Diversity (SBSD)-certified small business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to SBSBD-certified small businesses. This shall not exclude SBSBD-certified women-owned and minority-owned businesses when they have received SBSBD small business certification. No offeror or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Small Business and Supplier Diversity (SBSD) by the due date for receipt of proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the SBSBD certification number or FEIN, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided. **This information shall be submitted to: JMU Office of Procurement Services, Attn: SWAM Subcontracting Compliance, MSC 5720, Harrisonburg, VA 22807.**

2. Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution with every request for payment, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. **This information shall be submitted to: JMU Office of Procurement Services, SWAM Subcontracting Compliance, MSC 5720, Harrisonburg, VA 22807.** When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm with the Department of Small Business and Supplier Diversity (SBSD) certification number or FEIN number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default.
  
  3. Each prime contractor who wins an award valued over \$200,000 shall deliver to the contracting agency or institution with every request for payment, information on use of subcontractors that are not Department of Small Business and Supplier Diversity (SBSD)-certified small businesses. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, FEIN number, total dollar amount subcontracted, and type of product or service provided. **This information shall be submitted to: JMU Office of Procurement Services, Attn: SWAM Subcontracting Compliance, MSC 5720, Harrisonburg, VA 22807.**
- K. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH: A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with a public body shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
- L. PUBLIC POSTING OF COOPERATIVE CONTRACTS: James Madison University maintains a web-based contracts database with a public gateway access. Any resulting cooperative contract/s to this solicitation will be posted to the publicly accessible website. Contents identified as proprietary information will not be made public.
- M. CRIMINAL BACKGROUND CHECKS OF PERSONNEL ASSIGNED BY CONTRACTOR TO PERFORM WORK ON JMU PROPERTY: The Contractor shall obtain criminal background checks on all of their contracted employees who will be assigned to perform services on James Madison University property. The results of the background checks will be directed solely to the Contractor. The Contractor bears responsibility for confirming to the University contract administrator that the background checks have been

completed prior to work being performed by their employees or subcontractors. The Contractor shall only assign to work on the University campus those individuals whom it deems qualified and permissible based on the results of completed background checks. Notwithstanding any other provision herein, and to ensure the safety of students, faculty, staff and facilities, James Madison University reserves the right to approve or disapprove any contract employee that will work on JMU property. Disapproval by the University will solely apply to JMU property and should have no bearing on the Contractor's employment of an individual outside of James Madison University.

- N. INDEMNIFICATION: Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.
- O. ADDITIONAL GOODS AND SERVICES: The University may acquire other goods or services that the supplier provides than those specifically solicited. The University reserves the right, subject to mutual agreement, for the Contractor to provide additional goods and/or services under the same pricing, terms, and conditions and to make modifications or enhancements to the existing goods and services. Such additional goods and services may include other products, components, accessories, subsystems, or related services that are newly introduced during the term of this Agreement. Such additional goods and services will be provided to the University at favored nations pricing, terms, and conditions.
- P. SUBCONTRACTS: No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
- Q. PRIME CONTRACTOR RESPONSIBILITIES: The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
- R. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION: The contractor assures that information and data obtained as to personal facts and circumstances related to faculty, staff, students, and affiliates will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the Code of Virginia. This shall include FTI, which is a term of art and consists of federal tax returns and return information (*and information derived from it*) that is in contractor/agency possession or control which is covered by the confidentiality protections of the Internal Revenue Code (*IRC*) and subject to the IRC 6103(p)(4) safeguarding requirements including IRS oversight.

FTI is categorized as sensitive but unclassified information and may contain personally identifiable information (*PII*). Contractors who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Contractors shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.

- S. EXCESSIVE DOWNTIME: Equipment or software furnished under the contract shall be capable of continuous operation. Should the equipment or software become inoperable for a period of more than 24 hours, the contractor agrees to pro-rate maintenance charges to account for each full day of in operability. The period of in operability shall commence upon initial notification. In the event the equipment or software remains inoperable for more than two (2) consecutive calendar days, the contractor shall promptly replace the equipment or software at no charge upon request of the procuring agency. Such replacement shall be with new, unused product(s) of comparable quality, and must be installed and operational within two (2) days following the request for replacement.
- T. LATEST SOFTWARE VERSION: Any software product(s) provided under the contract shall be the latest version available to the general public as of the due date of this solicitation.
- U. SOFTWARE UPGRADES: The Commonwealth shall be entitled to any and all upgraded versions of the software covered in the contract that becomes available from the contractor. The maximum charge for upgrade shall not exceed the total difference between the cost of the Commonwealth's current version and the price the contractor sells or licenses the upgraded software under similar circumstances.
- V. SOURCE CODE: In the event the contractor ceases to maintain experienced staff and the resources needed to provide required software maintenance, the Commonwealth shall be entitled to have, use, and duplicate for its own use, a copy of the source code and associated documentation for the software products covered by the contract. Until such time as a complete copy of such material is provided, the Commonwealth shall have exclusive right to possess all physical embodiments of such contractor owned materials. The rights of the Commonwealth in this respect shall survive for a period of twenty years after the expiration or termination of the contract. All lease and royalty fees necessary to support this right are included in the initial license fee as contained in the pricing schedule.
- W. TERM OF SOFTWARE LICENSE: Unless otherwise stated in the solicitation, the software license(s) identified in the pricing schedule shall be purchased on a perpetual basis and shall continue in perpetuity. However the Commonwealth reserves the right to terminate the license at any time, although the mere expiration or termination of this contract shall not be construed as an intent to terminate the license. All acquired license(s) shall be for use at any computing facilities, on any equipment, by any number of users, and for any purposes for which it is procured. The Commonwealth further reserves the right to transfer all rights under the license to another state agency to which some or all of its functions are transferred.
- X. THIRD PARTY ACQUISITION OF SOFTWARE: The contractor shall notify the procuring agency in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. The contractor further agrees that the contract's terms and conditions, including any and all license rights and related services, shall not be affected by

the acquisition. Prior to completion of the acquisition, the contractor shall obtain, for the Commonwealth's benefit and deliver thereto, the assignee's agreement to fully honor the terms of the contract.

- Y. TITLE TO SOFTWARE: By submitting a proposal, the offeror represents and warrants that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this solicitation, and that neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.
- Z. WARRANTY AGAINST SHUTDOWN DEVICES: The contractor warrants that the equipment and software provided under the contract shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the equipment and software.
- AA. RENEWAL OF MAINTENANCE: Maintenance of the hardware or software specified in the resultant contract may be renewed by the mutual written agreement of both parties for additional one-year periods, under the terms and conditions of the original contract except as noted herein. Price changes may be negotiated at time of renewal; however, in no case shall the maintenance costs for a succeeding one-year period exceed the prior year's contract price(s), increased or decreased by more than the percentage increase or decrease in the other services category of the CPI-W section of the US Bureau of Labor Statistics Consumer Price Index, for the latest twelve months for which statistics are available.
- BB. NONVISUAL ACCESS TO TECHNOLOGY: All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Agreement:
1. effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
  2. the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
  3. nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
  4. the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not

available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, 2.2-3500 through 2.2-3504 of the *Code of Virginia*.

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any Commonwealth agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. If requested, the Contractor must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. (<http://www.section508.gov/>). The requirements of this Paragraph along with the Non-Visual Access to Technology Clause shall be construed to achieve full compliance with the Information Technology Access Act, §§2.2-3500 through 2.2-3504 of the *Code of Virginia*.

## IX. METHOD OF PAYMENT

The contractor will be paid on the basis of invoices submitted in accordance with the solicitation and any negotiations. James Madison University recognizes the importance of expediting the payment process for our vendors and suppliers. We are asking our vendors and suppliers to enroll in the Wells Fargo Bank single use Commercial Card Number process or electronic deposit (ACH) to your bank account so that future payments are made electronically. Contractors signed up for the Wells Fargo Bank single use Commercial Card Number process will receive the benefit of being paid in Net 15 days. Additional information is available online at:

<http://www.jmu.edu/financeoffice/accounting-operations-disbursements/cash-investments/vendor-payment-methods.shtml>

## X. PRICING SCHEDULE

The offeror shall provide pricing for all products and services included in proposal indicating one-time and on-going costs.

This pricing is for the next 5 years which will be billed annually. This license covers the cost for all users within the University including separate tenant for IRB department, Students from all departments, all staff and Professors and academic researchers. Any user with the University email address would be able to setup their account on QuestionPro.

Description	Annual Cost University Enterprise License
Annual Cost - Year 1	22,000

Annual Cost - Year 2	23,000
Annual Cost - Year 3	24,000
Annual Cost - Year 4	25,000
Annual Cost - Year 5	26,000

Onsite Training Cost ( If University Pursues this option)

Training Cost Per day: 1000 USD.

Travel Cost: Included.

Specify any associated charge card processing fees, if applicable, to be billed to the University.

## **XI. ATTACHMENTS**

Attachment A: Offeror Data Sheet

Attachment B: Small, Women, and Minority-owned Business (SWaM) Utilization Plan

Attachment C: Standard Contract Sample

Attachment D: James Madison University Information Technology Services Addendum

## ATTACHMENT A

### OFFEROR DATA SHEET

#### TO BE COMPLETED BY OFFEROR

1. **QUALIFICATIONS OF OFFEROR:** Offerors must have the capability and capacity in all respects to fully satisfy the contractual requirements.
2. **YEARS IN BUSINESS:** Indicate the length of time you have been in business providing these types of goods and services.  
 Years   15   Months   4
3. **REFERENCES:** Indicate below a listing of at least five (5) organizations, either commercial or governmental/educational, that your agency is servicing. Include the name and address of the person the purchasing agency has your permission to contact.

<b>Customer 1</b>	
Legal Name of Company	University of Tennessee
Company Mailing Address	Knoxville,
Company City, State, Zip	TN 37996, USA
Company Website Address	Utk.edu
Contact Person	Robert Muenchen
Company Telephone Number	865-974-5230
Company Fax Number	
Contact E-mail	<a href="mailto:muenchen@utk.edu">muenchen@utk.edu</a>
Industry of Company	Education
<b>Customer 2</b>	
Legal Name of Company	University of Texas at El Paso
Company Mailing Address	500 W University Ave, El Paso,

Company City, State, Zip	TX 79968, USA
Company Website Address	www.utep.edu
Contact Person	Francisco Poblano
Company Telephone Number	915-747-8783
Company Fax Number	
Contact E-mail	fpoblano@utep.edu
Industry of Company	Education
<b>Customer 3</b>	
Legal Name of Company	Robert Morris University
Company Mailing Address	6001 University Blvd, Moon,
Company City, State, Zip	PA 15108, USA
Company Website Address	www.rmu.edu
Contact Person	jochmann@rmu.edu
Company Telephone Number	412.397.6290
Company Fax Number	
Contact E-mail	<a href="mailto:jochmann@rmu.edu">jochmann@rmu.edu</a>
Industry of Company	Education
<b>Customer 4</b>	
Legal Name of Company	Arkansas Tech University

Company Mailing Address	215 W O St,
Company City, State, Zip	Russellville, AR 72801, USA
Company Website Address	www.atu.edu
Contact Person	Ken Wester
Company Telephone Number	479-964-0567
Company Fax Number	479-968-0216
Contact E-mail	<a href="mailto:kwester@atu.edu">kwester@atu.edu</a>
Industry of Company	Education

4. List full names and addresses of Offeror and any branch offices which may be responsible for administering the contract.

QuestionPro Inc.

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9450 SW Gemini Dr #62790

---

Beaverton, OR 97008-7105

---

USA

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5. RELATIONSHIP WITH THE COMMONWEALTH OF VIRGINIA: Is any member of the firm an employee of the Commonwealth of Virginia who has a personal interest in this contract pursuant to the [CODE OF VIRGINIA](#), SECTION 2.2-3100 – 3131?

YES  NO

IF YES, EXPLAIN:

***RETURN OF THIS PAGE IS REQUIRED***

ATTACHMENT B (Not Applicable for QuestionPro INC)

Small, Women and Minority-owned Businesses (SWaM) Utilization Plan

**Offeror Name:** \_\_\_\_\_ **Preparer Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Is your firm a **Small Business Enterprise** certified by the Department of Small Business and Supplier Diversity (SBSD)? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, certification number: \_\_\_\_\_ Certification date: \_\_\_\_\_

Is your firm a **Woman-owned Business Enterprise** certified by the Department of Small Business and Supplier Diversity (SBSD)? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, certification number: \_\_\_\_\_ Certification date: \_\_\_\_\_

Is your firm a **Minority-Owned Business Enterprise** certified by the Department of Small Business and Supplier Diversity (SBSD)? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, certification number: \_\_\_\_\_ Certification date: \_\_\_\_\_

Is your firm a **Micro Business** certified by the Department of Small Business and Supplier Diversity (SBSD)? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, certification number: \_\_\_\_\_ Certification date: \_\_\_\_\_

**Instructions:** *Populate the table below to show your firm's plans for utilization of small, women-owned and minority-owned business enterprises in the performance of the contract. Describe plans to utilize SWAMs businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.*

**Small Business:** "Small business " means a business, independently owned or operated by one or more persons who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years.

**Woman-Owned Business Enterprise:** A business concern which is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more women, and whose management and daily business operations are controlled by one or more of such individuals. **For purposes of the SWAM Program, all certified women-owned businesses are also a small business enterprise.**

**Minority-Owned Business Enterprise:** A business concern which is at least 51 percent owned by one or more minorities or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more minorities and whose management and daily business operations are controlled by one or more of such individuals. **For purposes of the SWAM Program, all certified minority-owned businesses are also a small business enterprise.**

**Micro Business** is a certified Small Business under the SWaM Program and has no more than twenty-five (25) employees **AND** no more than \$3 million in average annual revenue over the three-year period prior to their certification.

**All small, women, and minority owned businesses must be certified by the Commonwealth of Virginia Department of Small Business and Supplier Diversity (SBSD) to be counted in the SWAM program. Certification applications are available through SBSD at 800-223-0671 in Virginia, 804-786-6585 outside Virginia, or online at <http://www.sbsd.virginia.gov/> (Customer Service).**

***RETURN OF THIS PAGE IS REQUIRED***



ATTACHMENT C



**COMMONWEALTH OF VIRGINIA  
STANDARD CONTRACT**

Contract No. CMJ-1032

This contract entered into this 7th day of January 2019, by QuestionPro Inc. hereinafter called the "Contractor" and Commonwealth of Virginia, James Madison University called the "Purchasing Agency".

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF CONTRACT: The Contractor shall provide the services to the Purchasing Agency as set forth in the Contract Documents.

PERIOD OF PERFORMANCE: From \_\_\_\_\_ through \_\_\_\_\_

The contract documents shall consist of:

- (1) This signed form;
- (2) The following portions of the Request for Proposals dated \_\_\_\_\_ 11th January 2019 \_\_\_\_\_:
  - (a) The Statement of Needs,
  - (b) The General Terms and Conditions,
  - (c) The Special Terms and Conditions together with any negotiated modifications of those Special Conditions;
  - (d) List each addendum that may be issued
- (3) The Contractor's Proposal dated \_\_\_\_\_ 7th January 2019 \_\_\_\_\_ and the following negotiated modification to the Proposal, all of which documents are incorporated herein.
  - (a) Negotiations summary dated \_\_\_ 7th January 2019 \_\_\_\_\_.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR:

PURCHASING AGENCY:

By:   
VIVEK BHASKARAN  
(Signature)

By: \_\_\_\_\_  
(Signature)

Vivek Bhaskaran  
(Printed Name)

(Printed Name)

Title: \_\_\_\_\_ CEO \_\_\_\_\_

Title: \_\_\_\_\_

## ATTACHMENT D

### James Madison University Information Technology Services Addendum

CONTRACTOR NAME: QuestionPro Inc.

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PRODUCT/SOLUTION: Online Enterprise Survey Software

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#### Definitions:

- **Agreement:** The “Agreement” includes the contract, this addendum and any additional addenda and attachments to the contract, including the Contractor’s Form.
  - **University:** “University” or “the University” means James Madison University, its trustees, officers and employees.
  - **University Data:** “University Data” is defined as any data that the Contractor creates, obtains, accesses, transmits, maintains, uses, processes, stores or disposes of in performance of the Agreement. It includes all Personally Identifiable Information and other information that is not intentionally made generally available by the University on public websites.
  - **Personally Identifiable Information:** “Personally Identifiable Information” (PII) includes but is not limited to: Any information that directly relates to an individual and is reasonably likely to enable identification of that individual or information that is defined as PII and subject to protection by James Madison University under federal or Commonwealth of Virginia law.
  - **Security Breach:** “Security Breach” means a security-relevant event in which the security of a system or procedure involving University Data is breached, and in which University Data is exposed to unauthorized disclosure, access, alteration, or use.
  - **Service(s):** “Service” or “Services” means any goods or services acquired by the University from the Contractor.
1. **Rights and License in and to University Data:** The parties agree that as between them, all rights including all intellectual property rights in and to University Data shall remain the exclusive property of the University, and Contractor has a limited, nonexclusive license to use the data as provided in the Agreement solely for the purpose of performing its obligations hereunder.
  2. **Nonvisual Access To Technology:** All information technology which, pursuant to the Agreement, is purchased or upgraded by or for the use of any Commonwealth agency or institution or political subdivision of the Commonwealth (the “Technology”) shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. If requested, the Contractor must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. The requirements of this Paragraph along with the Non-Visual Access to Technology Clause shall be construed to achieve full compliance with the Information Technology Access Act, §§2.2-3500 through 2.2-3504 of the Code of Virginia. Compliance may be determined by the degree to which the product meets the recommendations described in the VPAT (Voluntary Product Accessibility Template) and/or WCAG 2.0 Level AA guidelines.
1. **Data Privacy:**
    - a. Contractor will use University Data only for the purpose of fulfilling its duties under the Agreement and will not share such data with or disclose it to any third party without the prior written consent of the University, except as required by the Agreement or as otherwise required by law.
    - b. University Data will not be stored outside the United States without prior written consent from the University.

- c. Contractor will provide access to University Data only to its employees and subcontractors who need to access the data to fulfill obligations under the Agreement. The Contractor will ensure that the Contractor's employees, and subcontractors when applicable, who perform work under the Agreement have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of the Agreement.
  - i. If the Contractor will have access to the records protected by the Family Educational Rights and Privacy Act (FERPA), Contractor acknowledges that for the purposes of the Agreement it will be designated as a "school official" with "legitimate educational interests" in such records, as those terms have been defined under FERPA and its implementing regulations, and Contractor agrees to abide by the limitations and requirements imposed on school officials. Contractor will use such records only for the purpose of fulfilling its duties under the Agreement for University's and its End Users' benefit, and will not share such data with or disclose it to any third party except as provided for in the Agreement, required by law, or authorized in writing by the University. Contractor acknowledges that its access to such records is limited to only those directly related to and necessary for the completion of Contractor's duties under the Agreement.

**2. Data Security:**

- a. Contractor will store and process University Data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure Contractor's own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved.
- b. Contractor will store and process University Data in a secure site and will provide a SAS 70, SAS 70 Type II, SSAE 16, or SOC 2, or other security report deemed sufficient by the University, from a third party reviewer along with annual updated security reports. If the Contractor is using a third-party cloud hosting company such as AWS, Rackspace, etc., the Contractor will obtain the security audit report from their hosting company and give the results to the University. The University should not have to request the report directly from the hosting company, or sign a nondisclosure agreement to receive it.
- c. Contractor will use industry-standards and up-to-date security tools, technologies and practices such as network firewalls, anti-virus, vulnerability scans, system logging, intrusion detection, 24x7 system monitoring and third-party penetration testing in providing services under the Agreement.
- d. Without limiting the foregoing, Contractor warrants that all electronic University Data will be encrypted in transmission (including via web interface) and stored at AES 256 of stronger.

**3. Data Authenticity, Integrity and Availability:**

- a. Contractor will take reasonable measures, including audit trails, to protect University Data against deterioration or degradation of data quality and authenticity. Contractor shall be responsible for ensuring that University Data, per the Virginia Public Records Act, "is preserved, maintained, and accessible throughout their lifecycle, including converting and migrating electronic data as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration."
- b. Contractor will ensure backups are successfully completed at the agreed interval and that restoration capability is maintained for restoration to a point-in-time and/or to the most current backup available.

- c. Contractor will maintain an uptime of 99.99% or greater, or as negotiated and accepted by the University, as agreed to for the contracted services via the use of appropriate redundancy, continuity of operations and disaster recovery planning and implementations, excluding regularly scheduled maintenance time.

**4. Employee Qualifications:**

- a. Contractor shall ensure that its employees have undergone appropriate background screening and possess all needed qualifications to comply with the terms of the Agreement including but not limited to all terms relating to data and intellectual property protection.

**5. Security Breach:**

- a. Response. Immediately (within one day) upon becoming aware of a Security Breach, or of circumstances that could have resulted in unauthorized access to or disclosure or use of University Data, Contractor will notify the University, fully investigate the incident, and cooperate fully with the University's investigation of and response to the incident. Except as otherwise required by law, Contractor will not provide notice of the incident directly to individuals whose Personally Identifiable Information was involved, regulatory agencies, or other entities, without prior written permission from the University.
- b. Liability. In addition to any other remedies available to the University under law or equity, when applicable to the type of services being provided, Contractor will pay for or reimburse the University in full for all costs incurred by the University in investigation and remediation of such Security Breach, including but not limited to providing notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities as required by law or contract; providing one year's credit monitoring to the affected individuals if the Personally Identifiable Information exposed during the breach could be used to commit financial identity theft; and the payment of legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners as a result of the Security Breach. Contractor agrees to indemnify, hold harmless and defend the University from and against any and all claims, damages, or other harm related to such Security Breach.

**6. Requests for Data, Response to Legal Orders or Demands for Data:**

- a. Except as otherwise expressly prohibited by law, Contractor will:
  - i. immediately notify the University of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking University Data;
  - ii. consult with the University regarding its response;
  - iii. cooperate with the University's requests in connection with efforts by the University to intervene and quash or modify the legal order, demand or request; and
  - iv. Upon the University's request, provide the University with a copy of its response.
- b. Contractor will make itself and any employees, contractors, or agents assisting in the performance of its obligations under the Agreement, available to the University at no cost to the University based upon claimed violation of any laws relating to security and/or privacy of the data that arises out of the Agreement. This shall include any data preservation or eDiscovery required by the University.

- c. The University may request and obtain access to University Data and related logs at any time for any reason and at no extra cost.

**7. Data Transfer Upon Termination or Expiration:**

- a. Contractor's obligations to protect University Data shall survive termination of the Agreement until all University Data has been returned or Securely Destroyed, meaning taking actions that render data written on media unrecoverable by both ordinary and extraordinary means.
- b. Upon termination or expiration of the Agreement, Contractor will ensure that all University Data are securely transferred, returned or destroyed as directed by the University in its sole discretion within 30 days of termination of the Agreement. Transfer/migration to the University or a third party designated by the University shall occur without significant interruption in service. Contractor shall ensure that such transfer/migration uses facilities, methods, and data formats that are accessible and compatible with the relevant systems of the University or its transferee, and to the extent technologically feasible, that the University will have reasonable access to University Data during the transition.
- c. In the event that the University requests destruction of its data, Contractor agrees to Securely Destroy all data in its possession and in the possession of any subcontractors or agents to which Contractor might have transferred University data. Contractor agrees to provide documentation of data destruction to the University and to complete any required Commonwealth of Virginia documentation regarding the destruction of University Data.
- d. Contractor will notify the University of impending cessation of its business and any contingency plans. This includes immediate transfer of any previously escrowed assets and data and providing the University access to Contractor's facilities to remove and destroy University-owned assets and data. Contractor shall implement its exit plan and take all necessary actions to ensure a smooth transition of service with minimal disruption to the University. The Contractor will also provide a full inventory and configuration of servers, routers, other hardware, and software involved in service delivery along with supporting documentation, indicating which if any of these are owned by or dedicated to the University. Contractor will work closely with its successor to ensure a successful transition to the new equipment, with minimal downtime and effect on the University, all such work to be coordinated and performed in advance of the formal, final transition date.

**8. Audits:**

- a. The University reserves the right in its sole discretion to perform audits of Contractor at no additional cost to the University to ensure compliance with the terms of the Agreement. Contractor shall reasonably cooperate in the performance of such audits. This provision applies to all agreements under which Contractor must create, obtain, transmit, use, maintain, process, or dispose of University Data.
- b. If Contractor must under the agreement create, obtain, transmit, use, maintain, process, or dispose of the subset of University Data known as Personally Identifiable Information or financial or business data, Contractor will at its expense conduct or have conducted at least annually a(n):
  - i. American Institute of CPAs Service Organization Controls (SOC) Type II audit, or other security audit with audit objectives deemed sufficient by the University,

which attests to Contractor's security policies, procedures and controls. Contractor shall also submit such documentation for any third-party cloud hosting provider(s) they may use (e.g. AWS, Rackspace, Azure, etc.) and for all subservice provider(s) or business partners relevant to this contract. Contractor shall also provide James Madison University with a designated point of contact for the SOC report(s) and risks related to the contract. This person shall address issues raised in the SOC report(s) of the Contractor and its relevant providers and partners, and respond to any follow up questions posed by the university in relation to technology systems, infrastructure, or information security concerns related to the contract. All documentation shall be provided free of charge and submitted to [IT-Assessments@jmu.edu](mailto:IT-Assessments@jmu.edu). The Contractor shall provide the SOC II report(s) and other necessary documentation annually 90 days prior to the contract anniversary date. The University should not have to request the SOC II reports or other assessment documents or sign a nondisclosure agreement.

- ii. vulnerability scan, performed by a scanner approved by the University, of Contractor's electronic systems and facilities that are used in any way to deliver electronic services under the Agreement; and
  - iii. formal penetration test, performed by a process and qualified personnel approved by the University, of Contractor's electronic systems and facilities that are used in any way to deliver electronic services under the Agreement.
- c. Additionally, Contractor will provide the University upon request the results of the above audits, scans and tests, and will promptly modify its security measures as needed based on those results in order to meet its obligations under the Agreement.

**9. Compliance:**

- a. Contractor will comply with all applicable laws and industry standards in performing services under the Agreement. Any Contractor personnel visiting the University's facilities will comply with all applicable University policies regarding access to, use of, and conduct within such facilities. The University will provide copies of such policies to Contractor upon request.
- b. Contractor warrants that the service it will provide to the University is fully compliant with and will enable the University to be compliant with relevant requirements of all laws, regulation, and guidance applicable to the University and/or Contractor, including but not limited to: the Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH), Gramm-Leach-Bliley Financial Modernization Act (GLB), Payment Card Industry Data Security Standards (PCI-DSS), Americans with Disabilities Act (ADA).

10. **No End User Agreements:** Any agreements or understandings, whether electronic, click through, verbal or in writing, between Contractor and University employees or other end users under the Agreement that conflict with the terms of the Agreement, including but not limited to this Addendum, shall not be valid or binding on the University or any such end users.

***To the extent allowed by Virginia law, James Madison University will keep any information provided in a security audit report confidential to protect the integrity of the Contractor.***

IN WITNESS WHEREOF, the parties have caused this addendum to be duly executed, intending thereby to be legally bound.

**JAMES MADISON UNIVERSITY**

SIGNATURE: \_\_\_\_\_  
PRINTED \_\_\_\_\_  
NAME: \_\_\_\_\_  
  
TITLE: \_\_\_\_\_  
  
DATE: \_\_\_\_\_

**QuestionPro INC.**

  
VIVEK BHASKARAN

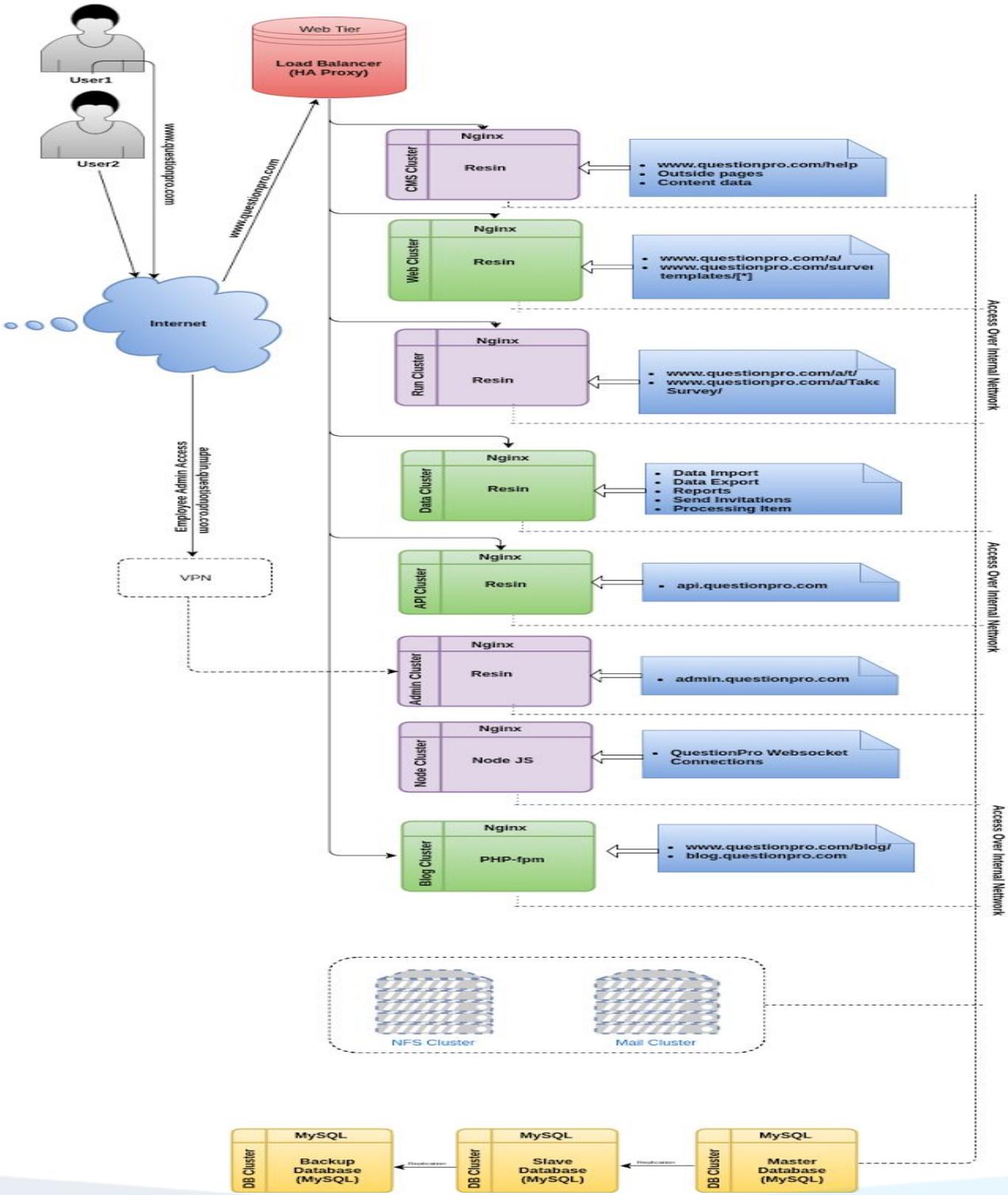
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PRINTED \_\_\_\_\_ Vivek Bhaskaran  
NAME: \_\_\_\_\_  
CEO  
  
TITLE: \_\_\_\_\_  
  
DATE: \_\_\_\_\_ 7th January 2019

*Last approved by James Madison University Information Technology, CIO and ISO, on May 30, 2018*

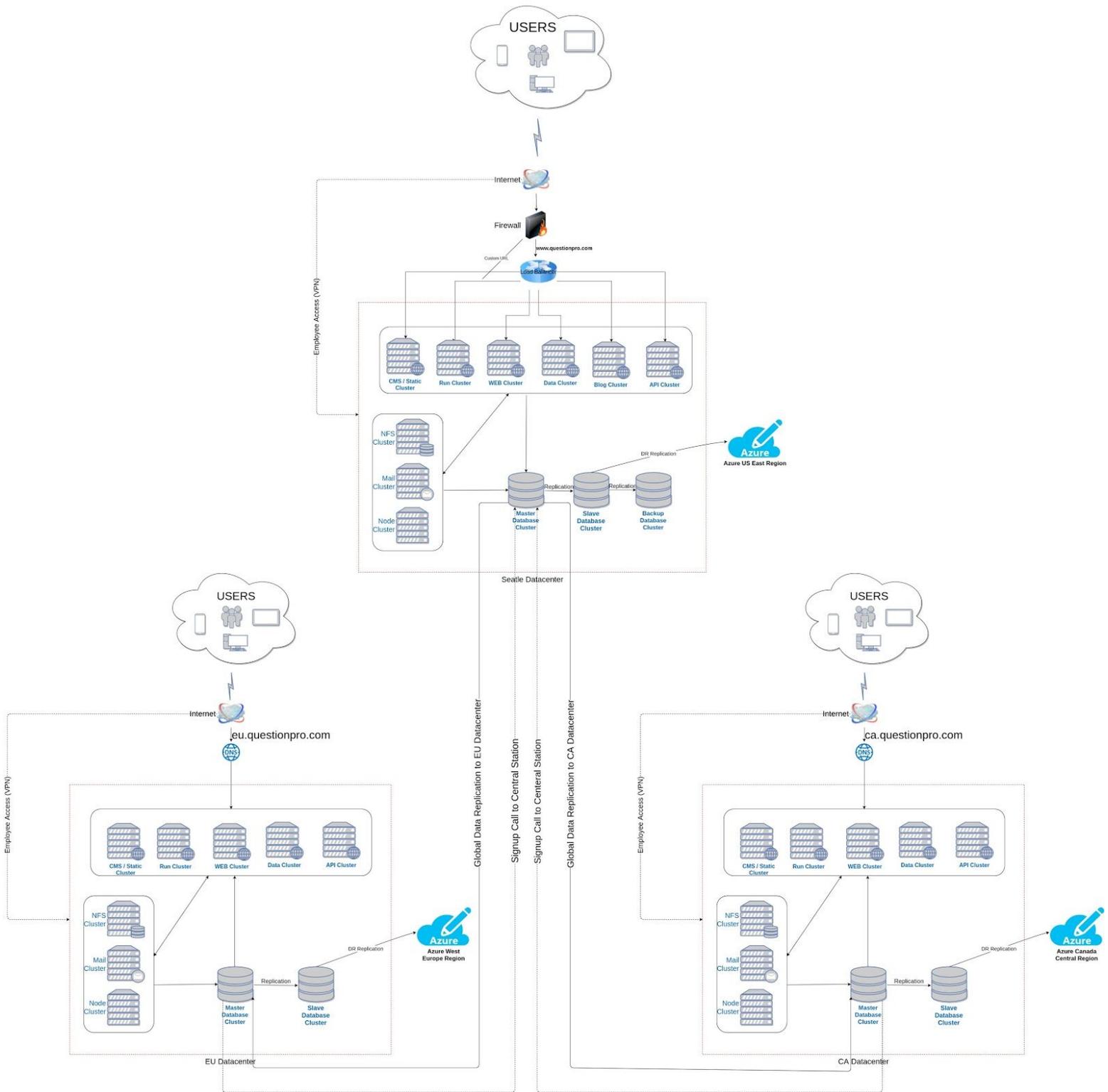
***RETURN OF THIS PAGE IS REQUIRED***

# **QuestionPro Logical Architecture Diagram 2017**

**QuestionPro Architecture**



# **QuestionPro Global Infrastructure Diagram 2017**





# Request for Proposal

## RFP# CMJ-1032

**Web Survey Application**

**November 28, 2018**

**NOTE: James Madison University will be closed for winter break from  
Wednesday, December 19, 2018  
until  
Wednesday, January 2, 2019**



**REQUEST FOR PROPOSAL**  
**RFP# CMJ-1032**

**Issue Date:** November 28, 2018  
**Title:** Web Survey Application  
**Issuing Agency:** Commonwealth of Virginia  
James Madison University  
Procurement Services MSC 5720  
752 Ott Street, Wine Price Building  
First Floor, Suite 1023  
Harrisonburg, VA 22807

**Period of Contract: From Date of Award Through One Year (Renewable)**

**Sealed Proposals Will Be Received Until 2:00 PM on January 9, 2019 for Furnishing The Services Described Herein.**

*SEALED PROPOSALS MAY BE MAILED, EXPRESS MAILED, OR HAND DELIVERED DIRECTLY TO THE ISSUING AGENCY SHOWN ABOVE.*

All Inquiries For Information And Clarification Should Be Directed To: Colleen Johnson, Buyer Specialist, Procurement Services, johns9cm@jmu.edu; 540-568-3137; (Fax) 540-568-7935 not later than five business days before the proposal closing date.

**NOTE: THE SIGNED PROPOSAL AND ALL ATTACHMENTS SHALL BE RETURNED.**

In compliance with this Request for Proposal and to all the conditions imposed herein, the undersigned offers and agrees to furnish the goods/services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation.

Name and Address of Firm:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
*(Signature in Ink)*

Name: \_\_\_\_\_  
*(Please Print)*

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Web Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Fax #: \_\_\_\_\_

ACKNOWLEDGE RECEIPT OF ADDENDUM: #1 \_\_\_\_\_ #2 \_\_\_\_\_ #3 \_\_\_\_\_ #4 \_\_\_\_\_ #5 \_\_\_\_\_ (please initial)

SMALL, WOMAN OR MINORITY OWNED BUSINESS:

YES;  NO; *IF YES* ⇒  SMALL;  WOMAN;  MINORITY ***IF MINORITY***:  AA;  HA;  AsA;  NW;  Micro

**Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against an offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.**

Rev. 5/4/18 LMF

# ***REQUEST FOR PROPOSAL***

*RFP # CMJ-1032*

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## I. PURPOSE

The purpose of this Request for Proposal (RFP) is to solicit sealed proposals from qualified sources to enter into a contract to provide a web survey application for James Madison University (JMU), an agency of the Commonwealth of Virginia. Initial contract shall be for one (1) year with an option to renew for nine (9) additional one-year periods.

## II. BACKGROUND

James Madison University (JMU) is a comprehensive public institution in Harrisonburg, Virginia with an enrollment of approximately 21,000 students and 3,000 faculty and staff. There are over 600 individual departments on campus that support seven academic divisions. The University offers over 120 majors, minors, and concentrations. Further information about the University may be found at the following website: <http://www.jmu.edu>.

For the past 10 years, JMU has used Qualtrics (<https://www.qualtrics.com>) as its primary survey creation, delivery, and management tool. During the 2017-2018 academic year, approximately 5800 surveys were deployed that generated over 300k responses. JMU community members use Qualtrics in a number of ways, including:

- **Formal Survey Research:** This research is likely to be grant-funded and/or require IRB approval.
- **Informal Surveys:** Informal surveys may include department/university-wide polls, or class-based research conducted by the instructor and/or students.
- **Tests and Quizzes:** Some instructors use the automatic scoring functionality to deliver online quizzes or tests.
- **Performance Appraisals:** It is common to use the web survey tool to collect feedback that is used in the annual evaluation of administrators and other staff.
- **Software Integrations:** Some JMU community members have used the Qualtrics API (<https://api.qualtrics.com/>) to incorporate its functionality into courseware or other research systems.

In addition to Qualtrics, some JMU community members use Google Forms (<https://www.google.com/forms/about>) to collect information. It is almost certain that other free survey tools are being employed at various places around the university, though none except Qualtrics is actively supported or integrated with single sign on (SSO).

## III. SMALL, WOMAN-OWNED AND MINORITY PARTICIPATION

It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities, and to encourage their participation in State procurement activities. The Commonwealth encourages contractors to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, and other contractual opportunities. Attachment B contains information on reporting spend data with subcontractors.

## IV. STATEMENT OF NEEDS

The Contractor shall have available and be able to demonstrate the use and functions of the following components and/or features of a web survey application. It is expected that any proposed software will already be fully developed, tested, offered publicly for sale and available immediately

for installation. For this project, the University is not interested in a custom developed software. Describe in detail the manner in which each item is addressed by the system.

A. Application Functionality:

1. Describe in detail the survey creation process to include the following aspects:
  - a. Survey question types and features
  - b. Formatting capabilities
  - c. Response validation
  - d. Multimedia (i.e. graphics, audio, video, etc.)
  - e. Skip logic and piping
  - f. Question randomization
  - g. Version control or ability to retrieve deleted questions.
  - h. Survey preview
  - i. Viewing and responding to a survey via different devices (mobile, tablet, etc.)
  - j. Embedding surveys in web pages
  - k. Ability to generate customized links for distribution
2. Describe how data from an external file may be incorporated into the survey, survey logic, and final data, including file upload.
3. Describe in detail the application's ability and process for providing the following email features:
  - a. Filtering or sampling of specific respondents
  - b. Emails sent to non-respondents
  - c. Importing and exporting of email lists
  - d. Incorporating hidden fields in an email (i.e. academic level, major, course, etc.)
4. Describe the application's ability to collect additional data from respondents to include the following items:
  - a. Item response time
  - b. Number of mouse clicks
  - c. Survey response time
  - d. Date and time stamps

- e. Tracking of IP addresses
  - f. Number of completed surveys
  - g. Number of opened but uncompleted surveys
  - h. File upload
5. Describe the application's library capabilities to include questions, typical response options, multimedia, and customizations.
  6. Describe the process for importing and/or exporting surveys created in XML, JSON, or other serialized or text format.
  7. Describe available survey templates within the application and the process for survey template development. Describe any software wizards for creating specialized surveys.
  8. Describe in detail the process for importing and exporting questionnaires and data, including the file types available for import and export.
  9. Describe data migration capabilities (see *Section II. Background* for information on survey application currently being used). Demonstrate the process of importing surveys and data from Qualtrics.
  10. Describe how the system can be used for test scoring to include the following:
    - a. Subscale scoring
    - b. Customized scoring routines
    - c. Response feedback
  11. Describe the application's ability to integrate survey responses with statistical packages such as R, SPSS, and SAS.
  12. Describe the process for inviting others to review results (i.e. public reports).
  13. Describe how users can collaborate on all aspects of survey generation, delivery, and analysis.
  14. Describe any API or systems-integration functionality that is available to typical users (i.e. *not* administrators or people with special elevated privileges).
  15. Describe the types of accounts and how they are set up and modified for the following:
    - a. Individuals (typical users, elevated privileges, administrators)
    - b. Groups/departments (class, research)

B. Application Technology:

1. Describe the application security features for data, for each module, and for the system. Describe all row-level security options as well as any field-level encryption available.

2. Define what *modifiable*, *customizable* and *configurable* mean for the proposed application.
3. Describe workflow functionality included with the application and provide a list of any function for which workflow is already built and delivered.

C. Reporting:

1. Describe application approach/strategy for reporting including the approach to ad-hoc reporting for power users as well as the occasional user.
2. Describe all reporting tools supported and how they integrate with the product. Specify if application licensing includes any of the products.
3. Provide a list of all reports delivered as part of the base product including a short description of each. Include a sample of several reports for review.
4. Describe reporting output formats available.

D. Services:

1. Describe available training options and include a catalog of training offerings (*provide any associated cost in Section X Pricing Schedule*). Response should include differentiation between technical staff and end-user training.

E. General:

1. Describe typical implementation timeline and project plan and include examples of previously used project plans.
2. Describe how product(s) addresses accessibility to ensure the application is accessible to people with disabilities. Describe testing for adherence to accessibility guidelines and standards. Provide documentation of the testing performed and results of that testing including the Web Accessibility and Template Guide (*WATG located at <https://www.vadsa.org/watg/>*).

F. Technical:

1. Provide a detailed diagram of the architecture/technical environment proposed for the system. Describe each component, the software running on it, and its purpose. List all communications between components including the protocols, ports, direction, third parties, and whether the communications are encrypted.
2. Describe the toolset from which your application is derived.
3. Describe the client operating system and browser requirements for your toolset. List any additional client-side software required for development/management of your toolset.
4. Describe any changes to default browser or client security settings.
5. Describe any functionality loss, installation or upgrade problems, or other difficulties if client applications are run using a standard client user account (*non-administrator*).
6. Describe support for mobile technologies including technology used, distribution method,

functionality, integration and development toolset and security.

7. Describe support for integration with JMU's existing systems listed in the background statement including pricing, availability of APIs, toolkits for creating connectors, available services, etc. Provide a full list of application connectors. Describe any other methods of integration supported.
8. Describe the system enhancements in development that are scheduled for release in the next twelve months.

G. Security:

1. Describe any communications that are not cryptographically protected (*e.g. non-https, non-ldaps, non-ftp*s).
2. Describe all authentication and authorization processes and options both end-user and among component interfaces. Include interoperability with external authentication and authorization sources (*e.g. directories, federations, SSO, two-factor authentication*). Include all pertinent documentation describing interfaces and configuration options.

## V. PROPOSAL PREPARATION AND SUBMISSION

A. GENERAL INSTRUCTIONS

**To ensure timely and adequate consideration of your proposal, offerors are to limit all contact, whether verbal or written, pertaining to this RFP to the James Madison University Procurement Office for the duration of this Proposal process. Failure to do so may jeopardize further consideration of Offeror's proposal.**

1. RFP Response: In order to be considered for selection, the **Offeror shall submit a complete response to this RFP**; and shall submit to the issuing Purchasing Agency:
  - a. **One (1) original and seven (7) copies** of the entire proposal, INCLUDING ALL ATTACHMENTS. Any proprietary information should be clearly marked in accordance with 3.f. below.
  - b. **One (1) electronic copy in WORD format or searchable PDF (CD or flash drive)** of the entire proposal, INCLUDING ALL ATTACHMENTS. Any proprietary information should be clearly marked in accordance with 3.f. below.
  - c. Should the proposal contain **proprietary information**, provide **one (1) redacted hard copy** of the proposal and all attachments with **proprietary portions removed or blacked out**. This copy should be clearly marked "*Redacted Copy*" on the front cover. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable. JMU shall not be responsible for the Contractor's failure to exclude proprietary information from this redacted copy.

No other distribution of the proposal shall be made by the Offeror.

2. The version of the solicitation issued by JMU Procurement Services, as amended by an addenda, is the mandatory controlling version of the document. Any modification of, or additions to, the solicitation by the Offeror shall not modify the official version of the solicitation issued by JMU Procurement services unless accepted in writing by the

University. Such modifications or additions to the solicitation by the Offeror may be cause for rejection of the proposal; however, JMU reserves the right to decide, on a case-by-case basis in its sole discretion, whether to reject such a proposal. If the modification or additions are not identified until after the award of the contract, the controlling version of the solicitation document shall still be the official state form issued by Procurement Services.

### 3. Proposal Preparation

- a. Proposals shall be signed by an authorized representative of the Offeror. All information requested should be submitted. Failure to submit all information requested may result in the purchasing agency requiring prompt submissions of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the purchasing agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
- b. Proposals shall be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.
- c. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, sub letter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and sub letter should be repeated at the top of the next page. The proposal should contain a table of contents which cross references the RFP requirements. Information which the offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at the appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.
- d. As used in this RFP, the terms “must”, “shall”, “should” and “may” identify the criticality of requirements. “Must” and “shall” identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labeled as “should” or “may” are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary. Depending on the overall response to the RFP, some individual “must” and “shall” items may not be fully satisfied, but it is the intent to satisfy most, if not all, “must” and “shall” requirements. The inability of an offeror to satisfy a “must” or “shall” requirement does not automatically remove that offeror from consideration; however, it may seriously affect the overall rating of the offeror’ proposal.
- e. Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.
- f. Ownership of all data, materials and documentation originated and prepared for the State pursuant to the RFP shall belong exclusively to the State and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by the offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror must

invoke the protection of Section 2.2-4342F of the Code of Virginia, in writing, either before or at the time the data is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret materials submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document, line item prices and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection and return of the proposal.

4. Oral Presentation: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to James Madison University. This provides an opportunity for the Offeror to clarify or elaborate on the proposal. This is a fact-finding and explanation session only and does not include negotiation. James Madison University will schedule the time and location of these presentations. Oral presentations are an option of the University and may or may not be conducted. Therefore, proposals should be complete. Presentations will be scheduled mid- to late-January.

B. SPECIFIC PROPOSAL INSTRUCTIONS

Proposals should be as thorough and detailed as possible so that James Madison University may properly evaluate your capabilities to provide the required services. Offerors are required to submit the following items as a complete proposal:

1. Return RFP cover sheet and all addenda acknowledgements, if any, signed and filled out as required.
2. Plan and methodology for providing the goods/services as described in Section IV. Statement of Needs of this Request for Proposal.
3. A written narrative statement to include, but not be limited to, the expertise, qualifications, and experience of the firm and resumes of specific personnel to be assigned to perform the work.
4. Offeror Data Sheet, included as *Attachment A* to this RFP.
5. Small Business Subcontracting Plan, included as *Attachment B* to this RFP. Offeror shall provide a Small Business Subcontracting plan which summarizes the planned utilization of Department of Small Business and Supplier Diversity (SBSD)-certified small businesses which include businesses owned by women and minorities, when they have received Department of Small Business and Supplier Diversity (SBSD) small business certification, under the contract to be awarded as a result of this solicitation. This is a requirement for all prime contracts in excess of \$100,000 unless no subcontracting opportunities exist.
6. Identify the amount of sales your company had during the last twelve months with each VASCUPP Member Institution. A list of VASCUPP Members can be found at: [www.VASCUPP.org](http://www.VASCUPP.org).
7. Proposed Cost. See Section X. Pricing Schedule of this Request for Proposal.

## **VI. EVALUATION AND AWARD CRITERIA**

### **A. EVALUATION CRITERIA:**

Proposals shall be evaluated by James Madison University using the following criteria:

1. Quality of products/services offered and suitability for intended purposes
2. Qualifications and experience of Offeror in providing the goods/services
3. Specific plans or methodology to be used to perform the services
4. Participation of Small, Women-Owned, & Minority (SWaM) Businesses
5. Cost

Allocation of points for evaluation criteria will be published to the eVA solicitation posting prior to the closing date and time.

- B. AWARD: Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous. Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

## **VII. GENERAL TERMS AND CONDITIONS**

- A. PURCHASING MANUAL: This solicitation is subject to the provisions of the Commonwealth of Virginia's Purchasing Manual for Institutions of Higher Education and Their Vendors and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is available for review at the purchasing office. In addition, the manual may be accessed electronically at <http://www.jmu.edu/procurement> or a copy can be obtained by calling Procurement Services at (540) 568-3145.
- B. APPLICABLE LAWS AND COURTS: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with applicable federal, state and local laws and regulations.
- C. ANTI-DISCRIMINATION: By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With

Disabilities Act and §10 of the Rules Governing Procurement, Chapter 2, Exhibit J, Attachment 1 (available for review at <http://www.jmu.edu/procurement>). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*§6 of the Rules Governing Procurement*).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
    - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
    - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
    - c. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting these requirements.
  2. The contractor will include the provisions of 1. Above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. ETHICS IN PUBLIC CONTRACTING: By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- F. DEBARMENT STATUS: By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

- G. ANTITRUST: By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS RFPs: Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- I. CLARIFICATION OF TERMS: If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.
- J. PAYMENT:
1. To Prime Contractor:
    - a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
    - b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
    - c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
    - d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
    - e. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Rules Governing Procurement, Chapter 2, Exhibit J, Attachment 1 § 53; available for review at <http://www.jmu.edu/procurement>*).

2. To Subcontractors:
    - a. A contractor awarded a contract under this solicitation is hereby obligated:
      - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
      - (2) To notify the agency and the subcontractors, in writing, of the contractor's intention to withhold payment and the reason.
    - b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
  3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
  4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.
- K. PRECEDENCE OF TERMS: Paragraphs A through J of these General Terms and Conditions and the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors, shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- L. QUALIFICATIONS OF OFFERORS: The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- M. TESTING AND INSPECTION: The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.

- O. CHANGES TO THE CONTRACT: Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
  2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
    - a. By mutual agreement between the parties in writing; or
    - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
    - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- P. DEFAULT: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- Q. INSURANCE: By signing and submitting a proposal under this solicitation, the offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with § 25 of the Rules Governing Procurement – Chapter 2, Exhibit J, Attachment 1, and 65.2-800 et. Seq. of the Code of Virginia (available for review at <http://www.jmu.edu/procurement>) The offeror further certifies that the contractor and any subcontractors will maintain these insurance

coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation: Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirement under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
  2. Employer's Liability: \$100,000
  3. Commercial General Liability: \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
  4. Automobile Liability: \$1,000,000 combined single limit. *(Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle.).*
- R. ANNOUNCEMENT OF AWARD: Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site ([www.eva.virginia.gov](http://www.eva.virginia.gov)) for a minimum of 10 days.
- S. DRUG-FREE WORKPLACE: During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- T. NONDISCRIMINATION OF CONTRACTORS: An offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies

for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

- U. eVA BUSINESS TO GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS: The eVA Internet electronic procurement solution, website portal [www.eVA.virginia.gov](http://www.eVA.virginia.gov), streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet procurement solution by completing the free eVA Vendor Registration. All offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the proposal being rejected. Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:

Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:

1. For orders issued July 1, 2014 and after, the Vendor Transaction Fee is:
    - a. Department of Small Business and Supplier Diversity (SBSD) certified Small Businesses: 1% capped at \$500 per order.
    - b. Businesses that are not Department of Small Business and Supplier Diversity (SBSD) certified Small Businesses: 1% capped at \$1,500 per order.
  2. For orders issued prior to July 1, 2014 the vendor transaction fees can be found at [www.eVA.virginia.gov](http://www.eVA.virginia.gov).
  3. The specified vendor transaction fee will be invoiced by the Commonwealth of Virginia Department of General Services approximately 60 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases/decreases) will be handled through purchase order changes.
- V. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the Commonwealth of Virginia shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- W. PRICING CURRENCY: Unless stated otherwise in the solicitation, offerors shall state offered prices in U.S. dollars.
- X. E-VERIFY REQUIREMENT OF ANY CONTRACTOR: Any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with James Madison University to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to any awarded contract.
- Y. TAXES: Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

## VIII. SPECIAL TERMS AND CONDITIONS

- A. AUDIT: The Contractor hereby agrees to retain all books, records, systems, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The Commonwealth of Virginia, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.
- B. CANCELLATION OF CONTRACT: James Madison University reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- C. IDENTIFICATION OF PROPOSAL ENVELOPE: The signed proposal should be returned in a separate envelope or package, sealed and identified as follows:

From: \_\_\_\_\_

Name of Offeror	Due Date	Time
Street or Box No.	RFP #	
City, State, Zip Code	RFP Title	
Name of Purchasing Officer:		

The envelope should be addressed as directed on the title page of the solicitation.

The Offeror takes the risk that if the envelope is not marked as described above, it may be inadvertently opened and the information compromised, which may cause the proposal to be disqualified. Proposals may be hand-delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

- D. LATE PROPOSALS: To be considered for selection, proposals must be received by the issuing office by the designated date and hour. The official time used in the receipt of proposals is that time on the automatic time stamp machine in the issuing office. Proposals received in the issuing office after the date and hour designated are automatically non responsive and will not be considered. The University is not responsible for delays in the delivery of mail by the U.S. Postal Service, private couriers, or the intra university mail system. It is the sole responsibility of the Offeror to ensure that its proposal reaches the issuing office by the designated date and hour.
- E. UNDERSTANDING OF REQUIREMENTS: It is the responsibility of each offeror to inquire about and clarify any requirements of this solicitation that is not understood. The University will not be bound by oral explanations as to the meaning of specifications or language contained in this solicitation. Therefore, all inquiries deemed to be substantive in nature must be in writing and submitted to the responsible buyer in the Procurement Services Office. Offerors must ensure that written inquiries reach the buyer at least five (5) days prior to the time set for receipt of offerors proposals. A copy of all queries and the respective response will be provided in the form of an addendum to all offerors who have indicated an interest in responding to this solicitation. Your signature on your Offer certifies that you fully understand all facets of this solicitation. These questions may be sent by Fax to 540/ 568-7936 or 540/568-7935.

- F. RENEWAL OF CONTRACT: This contract may be renewed by the Commonwealth for a period of nine (9) successive one year periods under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.
1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by no more than the percentage increase/decrease of the other services category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
  2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the other services category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
- G. SUBMISSION OF INVOICES: All invoices shall be submitted within sixty days of contract term expiration for the initial contract period as well as for each subsequent contract renewal period. Any invoices submitted after the sixty day period will not be processed for payment.
- H. OPERATING VEHICLES ON JAMES MADISON UNIVERSITY CAMPUS: Operating vehicles on sidewalks, plazas, and areas heavily used by pedestrians is prohibited. In the unlikely event a driver should find it necessary to drive on James Madison University sidewalks, plazas, and areas heavily used by pedestrians, the driver must yield to pedestrians. For a complete list of parking regulations, please go to [www.jmu.edu/parking](http://www.jmu.edu/parking); or to acquire a service representative parking permit, contact Parking Services at 540.568.3300. The safety of our students, faculty and staff is of paramount importance to us. Accordingly, violators may be charged.
- I. COOPERATIVE PURCHASING / USE OF AGREEMENT BY THIRD PARTIES: It is the intent of this solicitation and resulting contract(s) to allow for cooperative procurement. Accordingly, any public body, (to include government/state agencies, political subdivisions, etc.), cooperative purchasing organizations, public or private health or educational institutions or any University related foundation and affiliated corporations may access any resulting contract if authorized by the Contractor.

Participation in this cooperative procurement is strictly voluntary. If authorized by the Contractor(s), the resultant contract(s) will be extended to the entities indicated above to purchase goods and services in accordance with contract terms. As a separate contractual relationship, the participating entity will place its own orders directly with the Contractor(s) and shall fully and independently administer its use of the contract(s) to include contractual disputes, invoicing and payments without direct administration from the University. No modification of this contract or execution of a separate agreement is required to participate; however, the participating entity and the Contractor may modify the terms and conditions of this contract to accommodate specific governing laws, regulations, policies, and business goals required by the participating entity. Any such modification will apply solely between the participating entity and the Contractor.

The Contractor will notify the University in writing of any such entities accessing this contract. The Contractor will provide semi-annual usage reports for all entities accessing the contract.

The University shall not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by the Contractor to extend the contract. It is understood and agreed that the University is not responsible for the acts or omissions of any entity and will not be considered in default of the contract no matter the circumstances.

Use of this contract(s) does not preclude any participating entity from using other contracts or competitive processes as needed.

J. SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:

1. It is the goal of the Commonwealth that 42% of its purchases are made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All potential offerors are required to submit a Small Business Subcontracting Plan. Unless the offeror is registered as a Department of Small Business and Supplier Diversity (SBSD)-certified small business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to SBSD-certified small businesses. This shall not exclude SBSD-certified women-owned and minority-owned businesses when they have received SBSD small business certification. No offeror or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Small Business and Supplier Diversity (SBSD) by the due date for receipt of proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the SBSD certification number or FEIN, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided. **This information shall be submitted to: JMU Office of Procurement Services, Attn: SWAM Subcontracting Compliance, MSC 5720, Harrisonburg, VA 22807.**
2. Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution with every request for payment, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. **This information shall be submitted to: JMU Office of Procurement Services, SWAM Subcontracting Compliance, MSC 5720, Harrisonburg, VA 22807.** When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm with the Department of Small Business and Supplier Diversity (SBSD) certification number or FEIN number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default.
3. Each prime contractor who wins an award valued over \$200,000 shall deliver to the contracting agency or institution with every request for payment, information on use of subcontractors that are not Department of Small Business and Supplier Diversity (SBSD)-certified small businesses. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, FEIN number, total dollar amount subcontracted, and type of product or service provided. **This information shall be submitted to: JMU Office of Procurement Services, Attn: SWAM Subcontracting Compliance, MSC 5720, Harrisonburg, VA 22807.**

- K. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH: A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with a public body shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
- L. PUBLIC POSTING OF COOPERATIVE CONTRACTS: James Madison University maintains a web-based contracts database with a public gateway access. Any resulting cooperative contract/s to this solicitation will be posted to the publicly accessible website. Contents identified as proprietary information will not be made public.
- M. CRIMINAL BACKGROUND CHECKS OF PERSONNEL ASSIGNED BY CONTRACTOR TO PERFORM WORK ON JMU PROPERTY: The Contractor shall obtain criminal background checks on all of their contracted employees who will be assigned to perform services on James Madison University property. The results of the background checks will be directed solely to the Contractor. The Contractor bears responsibility for confirming to the University contract administrator that the background checks have been completed prior to work being performed by their employees or subcontractors. The Contractor shall only assign to work on the University campus those individuals whom it deems qualified and permissible based on the results of completed background checks. Notwithstanding any other provision herein, and to ensure the safety of students, faculty, staff and facilities, James Madison University reserves the right to approve or disapprove any contract employee that will work on JMU property. Disapproval by the University will solely apply to JMU property and should have no bearing on the Contractor's employment of an individual outside of James Madison University.
- N. INDEMNIFICATION: Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.
- O. ADDITIONAL GOODS AND SERVICES: The University may acquire other goods or services that the supplier provides than those specifically solicited. The University reserves the right, subject to mutual agreement, for the Contractor to provide additional goods and/or services under the same pricing, terms, and conditions and to make modifications or enhancements to the existing goods and services. Such additional goods and services may include other products, components, accessories, subsystems, or related services that are newly introduced during the term of this Agreement. Such additional goods and services will be provided to the University at favored nations pricing, terms, and conditions.
- P. SUBCONTRACTS: No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall, however,

remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

- Q. PRIME CONTRACTOR RESPONSIBILITIES: The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
- R. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION: The contractor assures that information and data obtained as to personal facts and circumstances related to faculty, staff, students, and affiliates will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the Code of Virginia. This shall include FTI, which is a term of art and consists of federal tax returns and return information (*and information derived from it*) that is in contractor/agency possession or control which is covered by the confidentiality protections of the Internal Revenue Code (*IRC*) and subject to the IRC 6103(p)(4) safeguarding requirements including IRS oversight. FTI is categorized as sensitive but unclassified information and may contain personally identifiable information (*PII*). Contractors who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Contractors shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.
- S. EXCESSIVE DOWNTIME: Equipment or software furnished under the contract shall be capable of continuous operation. Should the equipment or software become inoperable for a period of more than 24 hours, the contractor agrees to pro-rate maintenance charges to account for each full day of in operability. The period of in operability shall commence upon initial notification. In the event the equipment or software remains inoperable for more than two (2) consecutive calendar days, the contractor shall promptly replace the equipment or software at no charge upon request of the procuring agency. Such replacement shall be with new, unused product(s) of comparable quality, and must be installed and operational within two (2) days following the request for replacement.
- T. LATEST SOFTWARE VERSION: Any software product(s) provided under the contract shall be the latest version available to the general public as of the due date of this solicitation.
- U. SOFTWARE UPGRADES: The Commonwealth shall be entitled to any and all upgraded versions of the software covered in the contract that becomes available from the contractor. The maximum charge for upgrade shall not exceed the total difference between the cost of the Commonwealth's current version and the price the contractor sells or licenses the upgraded software under similar circumstances.
- V. SOURCE CODE: In the event the contractor ceases to maintain experienced staff and the resources needed to provide required software maintenance, the Commonwealth shall be entitled to have, use, and duplicate for its own use, a copy of the source code and associated documentation for the software products covered by the contract. Until such time as a complete copy of such material is provided, the Commonwealth shall have exclusive right to possess all physical embodiments of such contractor owned materials. The rights of the Commonwealth in this respect shall survive for a period of twenty years after the expiration or termination of

the contract. All lease and royalty fees necessary to support this right are included in the initial license fee as contained in the pricing schedule.

- W. TERM OF SOFTWARE LICENSE: Unless otherwise stated in the solicitation, the software license(s) identified in the pricing schedule shall be purchased on a perpetual basis and shall continue in perpetuity. However the Commonwealth reserves the right to terminate the license at any time, although the mere expiration or termination of this contract shall not be construed as an intent to terminate the license. All acquired license(s) shall be for use at any computing facilities, on any equipment, by any number of users, and for any purposes for which it is procured. The Commonwealth further reserves the right to transfer all rights under the license to another state agency to which some or all of its functions are transferred.
- X. THIRD PARTY ACQUISITION OF SOFTWARE: The contractor shall notify the procuring agency in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. The contractor further agrees that the contract's terms and conditions, including any and all license rights and related services, shall not be affected by the acquisition. Prior to completion of the acquisition, the contractor shall obtain, for the Commonwealth's benefit and deliver thereto, the assignee's agreement to fully honor the terms of the contract.
- Y. TITLE TO SOFTWARE: By submitting a proposal, the offeror represents and warrants that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this solicitation, and that neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.
- Z. WARRANTY AGAINST SHUTDOWN DEVICES: The contractor warrants that the equipment and software provided under the contract shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the equipment and software.
- AA. RENEWAL OF MAINTENANCE: Maintenance of the hardware or software specified in the resultant contract may be renewed by the mutual written agreement of both parties for additional one-year periods, under the terms and conditions of the original contract except as noted herein. Price changes may be negotiated at time of renewal; however, in no case shall the maintenance costs for a succeeding one-year period exceed the prior year's contract price(s), increased or decreased by more than the percentage increase or decrease in the other services category of the CPI-W section of the US Bureau of Labor Statistics Consumer Price Index, for the latest twelve months for which statistics are available.
- BB. NONVISUAL ACCESS TO TECHNOLOGY: All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Agreement:
1. effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
  2. the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;

3. nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
4. the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, 2.2-3500 through 2.2-3504 of the *Code of Virginia*.

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any Commonwealth agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. If requested, the Contractor must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. (<http://www.section508.gov/>). The requirements of this Paragraph along with the Non-Visual Access to Technology Clause shall be construed to achieve full compliance with the Information Technology Access Act, §§2.2-3500 through 2.2-3504 of the *Code of Virginia*.

## **IX. METHOD OF PAYMENT**

The contractor will be paid on the basis of invoices submitted in accordance with the solicitation and any negotiations. James Madison University recognizes the importance of expediting the payment process for our vendors and suppliers. We are asking our vendors and suppliers to enroll in the Wells Fargo Bank single use Commercial Card Number process or electronic deposit (ACH) to your bank account so that future payments are made electronically. Contractors signed up for the Wells Fargo Bank single use Commercial Card Number process will receive the benefit of being paid in Net 15 days. Additional information is available online at: <http://www.jmu.edu/financeoffice/accounting-operations-disbursements/cash-investments/vendor-payment-methods.shtml>

## **X. PRICING SCHEDULE**

The offeror shall provide pricing for all products and services included in proposal indicating one-time and on-going costs.

Specify any associated charge card processing fees, if applicable, to be billed to the University.

## **XI. ATTACHMENTS**

Attachment A: Offeror Data Sheet

Attachment B: Small, Women, and Minority-owned Business (SWaM) Utilization Plan

Attachment C: Standard Contract Sample

Attachment D: James Madison University Information Technology Services Addendum

ATTACHMENT A

OFFEROR DATA SHEET

TO BE COMPLETED BY OFFEROR

1. QUALIFICATIONS OF OFFEROR: Offerors must have the capability and capacity in all respects to fully satisfy the contractual requirements.
2. YEARS IN BUSINESS: Indicate the length of time you have been in business providing these types of goods and services.

Years \_\_\_\_\_ Months \_\_\_\_\_

3. REFERENCES: Indicate below a listing of at least five (5) organizations, either commercial or governmental/educational, that your agency is servicing. Include the name and address of the person the purchasing agency has your permission to contact.

CLIENT	LENGTH OF SERVICE	ADDRESS	CONTACT PERSON/PHONE #
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4. List full names and addresses of Offeror and any branch offices which may be responsible for administering the contract.

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5. RELATIONSHIP WITH THE COMMONWEALTH OF VIRGINIA: Is any member of the firm an employee of the Commonwealth of Virginia who has a personal interest in this contract pursuant to the [CODE OF VIRGINIA](#), SECTION 2.2-3100 – 3131?

YES  NO

IF YES, EXPLAIN: \_\_\_\_\_

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## ATTACHMENT B

Small, Women and Minority-owned Businesses (SWaM) Utilization Plan

**Offeror Name:** \_\_\_\_\_ **Preparer Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Is your firm a **Small Business Enterprise** certified by the Department of Small Business and Supplier Diversity (SBSD)? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, certification number: \_\_\_\_\_ Certification date: \_\_\_\_\_

Is your firm a **Woman-owned Business Enterprise** certified by the Department of Small Business and Supplier Diversity (SBSD)? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, certification number: \_\_\_\_\_ Certification date: \_\_\_\_\_

Is your firm a **Minority-Owned Business Enterprise** certified by the Department of Small Business and Supplier Diversity (SBSD)? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, certification number: \_\_\_\_\_ Certification date: \_\_\_\_\_

Is your firm a **Micro Business** certified by the Department of Small Business and Supplier Diversity (SBSD)? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, certification number: \_\_\_\_\_ Certification date: \_\_\_\_\_

**Instructions:** *Populate the table below to show your firm's plans for utilization of small, women-owned and minority-owned business enterprises in the performance of the contract. Describe plans to utilize SWAMs businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.*

**Small Business:** "Small business " means a business, independently owned or operated by one or more persons who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years.

**Woman-Owned Business Enterprise:** A business concern which is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more women, and whose management and daily business operations are controlled by one or more of such individuals. **For purposes of the SWAM Program, all certified women-owned businesses are also a small business enterprise.**

**Minority-Owned Business Enterprise:** A business concern which is at least 51 percent owned by one or more minorities or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more minorities and whose management and daily business operations are controlled by one or more of such individuals. **For purposes of the SWAM Program, all certified minority-owned businesses are also a small business enterprise.**

**Micro Business** is a certified Small Business under the SWaM Program and has no more than twenty-five (25) employees AND no more than \$3 million in average annual revenue over the three-year period prior to their certification.

**All small, women, and minority owned businesses must be certified by the Commonwealth of Virginia Department of Small Business and Supplier Diversity (SBSD) to be counted in the SWAM program. Certification applications are available through SBSB at 800-223-0671 in Virginia, 804-786-6585 outside Virginia, or online at <http://www.sbsd.virginia.gov/> (Customer Service).**

***RETURN OF THIS PAGE IS REQUIRED***

**ATTACHMENT B (CNT'D)**  
**Small, Women and Minority-owned Businesses (SWaM) Utilization Plan**

Procurement Name and Number: \_\_\_\_\_

Date Form Completed: \_\_\_\_\_

Listing of Sub-Contractors, to include, Small, Woman Owned and Minority Owned Businesses  
for this Proposal and Subsequent Contract

Offeror / Proposer:

\_\_\_\_\_ Firm

\_\_\_\_\_ Address

\_\_\_\_\_ Contact Person/No.

Sub-Contractor's Name and Address	Contact Person & Phone Number	SBSD Certification Number	Services or Materials Provided	Total Subcontractor Contract Amount (to include change orders)	Total Dollars Paid Subcontractor to date <small>(to be submitted with request for payment from JMU)</small>

*(Form shall be submitted with proposal and if awarded, again with submission of each request for payment)*

**RETURN OF THIS PAGE IS REQUIRED**

ATTACHMENT C



**JAMES MADISON UNIVERSITY**

**COMMONWEALTH OF VIRGINIA  
STANDARD CONTRACT**

Contract No. \_\_\_\_\_

This contract entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ hereinafter called the "Contractor" and Commonwealth of Virginia, James Madison University called the "Purchasing Agency".

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF CONTRACT: The Contractor shall provide the services to the Purchasing Agency as set forth in the Contract Documents.

PERIOD OF PERFORMANCE: From \_\_\_\_\_ through \_\_\_\_\_

The contract documents shall consist of:

- (1) This signed form;
- (2) The following portions of the Request for Proposals dated \_\_\_\_\_:
  - (a) The Statement of Needs,
  - (b) The General Terms and Conditions,
  - (c) The Special Terms and Conditions together with any negotiated modifications of those Special Conditions;
  - (d) List each addendum that may be issued
- (3) The Contractor's Proposal dated \_\_\_\_\_ and the following negotiated modification to the Proposal, all of which documents are incorporated herein.
  - (a) Negotiations summary dated \_\_\_\_\_.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR:

PURCHASING AGENCY:

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

# ATTACHMENT D

## James Madison University Information Technology Services Addendum

CONTRACTOR NAME: \_\_\_\_\_

PRODUCT/SOLUTION: \_\_\_\_\_

### Definitions:

- **Agreement:** The “Agreement” includes the contract, this addendum and any additional addenda and attachments to the contract, including the Contractor’s Form.
- **University:** “University” or “the University” means James Madison University, its trustees, officers and employees.
- **University Data:** “University Data” is defined as any data that the Contractor creates, obtains, accesses, transmits, maintains, uses, processes, stores or disposes of in performance of the Agreement. It includes all Personally Identifiable Information and other information that is not intentionally made generally available by the University on public websites.
- **Personally Identifiable Information:** “Personally Identifiable Information” (PII) includes but is not limited to: Any information that directly relates to an individual and is reasonably likely to enable identification of that individual or information that is defined as PII and subject to protection by James Madison University under federal or Commonwealth of Virginia law.
- **Security Breach:** “Security Breach” means a security-relevant event in which the security of a system or procedure involving University Data is breached, and in which University Data is exposed to unauthorized disclosure, access, alteration, or use.
- **Service(s):** “Service” or “Services” means any goods or services acquired by the University from the Contractor.

1. **Rights and License in and to University Data:** The parties agree that as between them, all rights including all intellectual property rights in and to University Data shall remain the exclusive property of the University, and Contractor has a limited, nonexclusive license to use the data as provided in the Agreement solely for the purpose of performing its obligations hereunder.
2. **Nonvisual Access To Technology:** All information technology which, pursuant to the Agreement, is purchased or upgraded by or for the use of any Commonwealth agency or institution or political subdivision of the Commonwealth (the “Technology”) shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. If requested, the Contractor must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. The requirements of this Paragraph along with the Non-Visual Access to Technology Clause shall be construed to achieve full compliance with the Information Technology Access Act, §§2.2-3500 through 2.2-3504 of the Code of Virginia. Compliance may be determined by the degree to which the product meets the recommendations described in the VPAT (Voluntary Product Accessibility Template) and/or WCAG 2.0 Level AA guidelines.
3. **Data Privacy:**
  - a. Contractor will use University Data only for the purpose of fulfilling its duties under the Agreement and will not share such data with or disclose it to any third party without the prior written consent of the University, except as required by the Agreement or as otherwise required by law.
  - b. University Data will not be stored outside the United States without prior written consent from the University.
  - c. Contractor will provide access to University Data only to its employees and subcontractors who need to access the data to fulfill obligations under the Agreement. The Contractor will ensure that the Contractor’s employees, and subcontractors when applicable, who perform work under the Agreement have read,

understood, and received appropriate instruction as to how to comply with the data protection provisions of the Agreement.

- i. If the Contractor will have access to the records protected by the Family Educational Rights and Privacy Act (FERPA), Contractor acknowledges that for the purposes of the Agreement it will be designated as a “school official” with “legitimate educational interests” in such records, as those terms have been defined under FERPA and its implementing regulations, and Contractor agrees to abide by the limitations and requirements imposed on school officials. Contractor will use such records only for the purpose of fulfilling its duties under the Agreement for University’s and its End Users’ benefit, and will not share such data with or disclose it to any third party except as provided for in the Agreement, required by law, or authorized in writing by the University. Contractor acknowledges that its access to such records is limited to only those directly related to and necessary for the completion of Contractor’s duties under the Agreement.

**4. Data Security:**

- a. Contractor will store and process University Data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure Contractor’s own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved.
- b. Contractor will store and process University Data in a secure site and will provide a SAS 70, SAS 70 Type II, SSAE 16, or SOC 2, or other security report deemed sufficient by the University, from a third party reviewer along with annual updated security reports. If the Contractor is using a third-party cloud hosting company such as AWS, Rackspace, etc., the Contractor will obtain the security audit report from their hosting company and give the results to the University. The University should not have to request the report directly from the hosting company, or sign a nondisclosure agreement to receive it.
- c. Contractor will use industry-standards and up-to-date security tools, technologies and practices such as network firewalls, anti-virus, vulnerability scans, system logging, intrusion detection, 24x7 system monitoring and third-party penetration testing in providing services under the Agreement.
- d. Without limiting the foregoing, Contractor warrants that all electronic University Data will be encrypted in transmission (including via web interface) and stored at AES 256 or stronger.

**5. Data Authenticity, Integrity and Availability:**

- a. Contractor will take reasonable measures, including audit trails, to protect University Data against deterioration or degradation of data quality and authenticity. Contractor shall be responsible for ensuring that University Data, per the Virginia Public Records Act, “is preserved, maintained, and accessible throughout their lifecycle, including converting and migrating electronic data as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration.”
- b. Contractor will ensure backups are successfully completed at the agreed interval and that restoration capability is maintained for restoration to a point-in-time and/or to the most current backup available.
- c. Contractor will maintain an uptime of 99.99% or greater, or as negotiated and accepted by the University, as agreed to for the contracted services via the use of appropriate redundancy, continuity of operations and disaster recovery planning and implementations, excluding regularly scheduled maintenance time.

**6. Employee Qualifications:**

- a. Contractor shall ensure that its employees have undergone appropriate background screening and possess all needed qualifications to comply with the terms of the Agreement including but not limited to all terms relating to data and intellectual property protection.

**7. Security Breach:**

- a. Response. Immediately (within one day) upon becoming aware of a Security Breach, or of circumstances that could have resulted in unauthorized access to or disclosure or use of University Data, Contractor will notify the University, fully investigate the incident, and cooperate fully with the University’s investigation of and response to the incident. Except as otherwise required by law, Contractor will not provide notice

of the incident directly to individuals whose Personally Identifiable Information was involved, regulatory agencies, or other entities, without prior written permission from the University.

- b. Liability. In addition to any other remedies available to the University under law or equity, when applicable to the type of services being provided, Contractor will pay for or reimburse the University in full for all costs incurred by the University in investigation and remediation of such Security Breach, including but not limited to providing notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities as required by law or contract; providing one year's credit monitoring to the affected individuals if the Personally Identifiable Information exposed during the breach could be used to commit financial identity theft; and the payment of legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners as a result of the Security Breach. Contractor agrees to indemnify, hold harmless and defend the University from and against any and all claims, damages, or other harm related to such Security Breach.

**8. Requests for Data, Response to Legal Orders or Demands for Data:**

- a. Except as otherwise expressly prohibited by law, Contractor will:
  - i. immediately notify the University of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking University Data;
  - ii. consult with the University regarding its response;
  - iii. cooperate with the University's requests in connection with efforts by the University to intervene and quash or modify the legal order, demand or request; and
  - iv. Upon the University's request, provide the University with a copy of its response.
- b. Contractor will make itself and any employees, contractors, or agents assisting in the performance of its obligations under the Agreement, available to the University at no cost to the University based upon claimed violation of any laws relating to security and/or privacy of the data that arises out of the Agreement. This shall include any data preservation or eDiscovery required by the University.
- c. The University may request and obtain access to University Data and related logs at any time for any reason and at no extra cost.

**9. Data Transfer Upon Termination or Expiration:**

- a. Contractor's obligations to protect University Data shall survive termination of the Agreement until all University Data has been returned or Securely Destroyed, meaning taking actions that render data written on media unrecoverable by both ordinary and extraordinary means.
- b. Upon termination or expiration of the Agreement, Contractor will ensure that all University Data are securely transferred, returned or destroyed as directed by the University in its sole discretion within 30 days of termination of the Agreement. Transfer/migration to the University or a third party designated by the University shall occur without significant interruption in service. Contractor shall ensure that such transfer/migration uses facilities, methods, and data formats that are accessible and compatible with the relevant systems of the University or its transferee, and to the extent technologically feasible, that the University will have reasonable access to University Data during the transition.
- c. In the event that the University requests destruction of its data, Contractor agrees to Securely Destroy all data in its possession and in the possession of any subcontractors or agents to which Contractor might have transferred University data. Contractor agrees to provide documentation of data destruction to the University and to complete any required Commonwealth of Virginia documentation regarding the destruction of University Data.
- d. Contractor will notify the University of impending cessation of its business and any contingency plans. This includes immediate transfer of any previously escrowed assets and data and providing the University access to Contractor's facilities to remove and destroy University-owned assets and data. Contractor shall implement its exit plan and take all necessary actions to ensure a smooth transition of service with minimal

disruption to the University. The Contractor will also provide a full inventory and configuration of servers, routers, other hardware, and software involved in service delivery along with supporting documentation, indicating which if any of these are owned by or dedicated to the University. Contractor will work closely with its successor to ensure a successful transition to the new equipment, with minimal downtime and effect on the University, all such work to be coordinated and performed in advance of the formal, final transition date.

#### **10. Audits:**

- a. The University reserves the right in its sole discretion to perform audits of Contractor at no additional cost to the University to ensure compliance with the terms of the Agreement. Contractor shall reasonably cooperate in the performance of such audits. This provision applies to all agreements under which Contractor must create, obtain, transmit, use, maintain, process, or dispose of University Data.
- b. If Contractor must under the agreement create, obtain, transmit, use, maintain, process, or dispose of the subset of University Data known as Personally Identifiable Information or financial or business data, Contractor will at its expense conduct or have conducted at least annually a(n):
  - i. American Institute of CPAs Service Organization Controls (SOC) Type II audit, or other security audit with audit objectives deemed sufficient by the University, which attests to Contractor's security policies, procedures and controls. Contractor shall also submit such documentation for any third-party cloud hosting provider(s) they may use (e.g. AWS, Rackspace, Azure, etc.) and for all subservice provider(s) or business partners relevant to this contract. Contractor shall also provide James Madison University with a designated point of contact for the SOC report(s) and risks related to the contract. This person shall address issues raised in the SOC report(s) of the Contractor and its relevant providers and partners, and respond to any follow up questions posed by the university in relation to technology systems, infrastructure, or information security concerns related to the contract. All documentation shall be provided free of charge and submitted to [IT-Assessments@jmu.edu](mailto:IT-Assessments@jmu.edu). The Contractor shall provide the SOC II report(s) and other necessary documentation annually 90 days prior to the contract anniversary date. The University should not have to request the SOC II reports or other assessment documents or sign a nondisclosure agreement.
  - ii. vulnerability scan, performed by a scanner approved by the University, of Contractor's electronic systems and facilities that are used in any way to deliver electronic services under the Agreement; and
  - iii. formal penetration test, performed by a process and qualified personnel approved by the University, of Contractor's electronic systems and facilities that are used in any way to deliver electronic services under the Agreement.
- c. Additionally, Contractor will provide the University upon request the results of the above audits, scans and tests, and will promptly modify its security measures as needed based on those results in order to meet its obligations under the Agreement.

#### **11. Compliance:**

- a. Contractor will comply with all applicable laws and industry standards in performing services under the Agreement. Any Contractor personnel visiting the University's facilities will comply with all applicable University policies regarding access to, use of, and conduct within such facilities. The University will provide copies of such policies to Contractor upon request.
- b. Contractor warrants that the service it will provide to the University is fully compliant with and will enable the University to be compliant with relevant requirements of all laws, regulation, and guidance applicable to the University and/or Contractor, including but not limited to: the Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH), Gramm-Leach-Bliley Financial Modernization Act (GLB), Payment Card Industry Data Security Standards (PCI-DSS), Americans with Disabilities Act (ADA).

12. **No End User Agreements:** Any agreements or understandings, whether electronic, click through, verbal or in writing, between Contractor and University employees or other end users under the Agreement that conflict with the terms of the Agreement, including but not limited to this Addendum, shall not be valid or binding on the University or any such end users.

***To the extent allowed by Virginia law, James Madison University will keep any information provided in a security audit report confidential to protect the integrity of the Contractor.***

IN WITNESS WHEREOF, the parties have caused this addendum to be duly executed, intending thereby to be legally bound.

**JAMES MADISON UNIVERSITY**

**CONTRACTOR**

SIGNATURE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

*Last approved by James Madison University Information Technology, CIO and ISO, on May 30, 2018*

***RETURN OF THIS PAGE IS REQUIRED***



January 8, 2019

**ADDENDUM NO. ONE**

**TO ALL OFFERORS:**

**REFERENCE:** Request for Proposal No: **RFP# CMJ-1032**  
RFP Issue Date: **November 29, 2018**  
Commodity: **Web Survey Application**  
RFP Closing On: **January 9, 2019 at 2:00 p.m. (Eastern)**  
**January 11, 2019 at 2:00 p.m. (Eastern)**

**Please note the clarifications or change(s) made on this proposal:**

The closing date and time has been extended to January 11, 2019 at 2:00 p.m. Eastern.

Sincerely,

Colleen Johnson  
Buyer Specialist

PROCUREMENT SERVICES  
MSC 5720  
752 Ott Street  
Wine-Price Building  
Harrisonburg, VA 22807  
540.568.7523 Phone