

| | | | | | | |
|---|--------|---|----------|---|---|---|
| Purchase Order | | Marshall University Office of Purchasing One John Marshall Drive Huntington WV, 25755-4100 Direct all inquiries regarding this order to: (304) 696-2822 | | | Purchase Order # MU17CONTSERV | |
| TO: WITT O'BRIEN'S, LLC 1201 15TH ST NW STE 600 WASHINGTON DC 20005 202-585-0780 | | Vendor Code: 27-2783923 | | Ship to: Bldg: Room #: | | THIS ORDER IS SUBJECT TO THE GENERAL TERMS AND CONDITIONS AS PRESENTED ON REVERSE SIDE HEREOF AND AS SET FORTH HEREIN WWFIMS Account #: |
| P.O. Date | FY | Buyer | Ship Via | F.O.B | Terms | Contract # |
| 11/07/2017 | 2018 | HRS | | | | |
| <u>AGREEMENT</u> | | | | | | |
| <p>This agreement constitutes acceptance of contract made by and between MARSHALL UNIVERSITY, on behalf of the Governing Board, and <u>Witt O'Brien's, LLC</u> <u>Continuity of Operations Plan (COOP)</u></p> <hr/> <hr/> <hr/> <p>Services shall begin <u>Upon contract acceptance</u> and extend through <u>Final Acceptance of Plan</u> All in accordance with the agreement attached hereto and made a part hereof.</p> <p>Schedule of payment \$ <u>AS</u> per <u>Agreement</u></p> <p>Fee \$ <u> </u> per agreement</p> <p>Travel Expense \$ <u> </u></p> <p>Other Expense \$ <u> </u></p> <p>Total \$ <u> </u> 68,706.00</p> <p>Approved as to sufficiency of form and manner of execution this <u> </u> day of <u> </u>, 20 <u> </u> <u>N/A</u> Attorney General of the State of West Virginia By: <u>N/A</u> Chief Counsel</p> <p style="text-align: center;">THIS ORDER IS EXEMPT FROM ALL SALES TAX LIMIT EACH INVOICE TO A SINGLE PURCHASE ORDER NUMBER</p> | | | | | | |
| Line No. | Fund | Org. | Account | Encumber Amount | | |
| 1. | 119015 | 5020 | 70251 | 68,706.00 | P1801048 | |
| 2. | | | | | Total: 68,706.00 | |
| 3. | | | | | | |
| 4. | | | | | | |
| Mail Original Invoice and 1 Copy to: Marshall University Accounts Payable One John Marshall Drive Huntington, WV 25755-4500 | | | | | | |
| | | | | | <i>X Stephanie CP Smith</i> 11/14/2017 Authorized Signature Date | |

Vendor: **Witt O'Brien's, LLC**

Organization Name

Environmental Health and Safety Department

| Item # | Quantity | Unit | Description | Unit Price | Amount |
|--------|----------|------|--|------------|--------|
| | | | <p>Witt O'Brien's, LLC will provide a Continuity of Operations Plan, (COOP), to Marshall University. Proposal is herein incorporated by reference to firm's:</p> <ul style="list-style-type: none"> - Table of Contents - RFP cover pages <p>Summary of Seven Phases:</p> <ul style="list-style-type: none"> I. Kickoff and Initial Research II. Conduct Business Impact/Threat and Vulnerability Analysis III. Identify Essential Functions and Continuity Provisions IV. Develop COOP Plan V. COOP Plan Testing and Exercise VI. Review and Update VII. Project Close-out and Final Reporting <p>Project Time-line:</p> <p>Initiation Phase - 21 days from contract award</p> <p>Planning Phase -14 days from completion of Initiation phase</p> <p>Project Planning determines schedule for remaining phases</p> <p>University Contact:</p> <p>Tracy Smith, Director of Health & Safety, 304-696-2993, tsmith@marshall.edu</p> | | |




Table of Contents

| | |
|--|-----------|
| Proposal Cover Page | 1 |
| Proposal Cover Page | 2 |
| ADDENDUM #1 | 2 |
| Proposal Cover Page | 3 |
| ADDENDUM #2 | 3 |
| Proposal Cover Letter | 4 |
| TABLE OF CONTENTS | 6 |
| Section 3.4.7 References | 7 |
| Section 4 Proposal Submission Requirements | 9 |
| 4.1 OVERALL PROPOSAL SUITABILITY | 9 |
| Scope of Work..... | 9 |
| 4.2 ORGANIZATIONAL EXPERIENCE | 16 |
| 4.3 TECHNICAL EXPERTISE AND EXPERIENCE..... | 17 |
| Key Staff and Experience | 17 |
| 4.4 PREVIOUS WORK | 27 |
| 4.5 PROJECT TIMELINE | 29 |
| Exceptions for the University's Consideration | 30 |
| Proposal Forms | 31 |

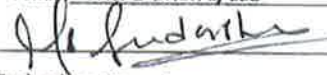
Section 4.4 Cost Proposal is Submitted Separately


| Witt O'Brien's, LLC Marshall University RFP MU17CONTSERV Section 4.4 Cost Proposal | | | | | | | |
|--|--|---------------------------------|-----------------|----------------|-----------------|----------------|---------------------|
| Phase | Description | Project Manager | Senior Planner | SME | Planner | Hours Per Task | Cost Per Task |
| | | \$180 | \$160 | \$200 | \$115 | | |
| 1 | Kickoff and Initial Research | 8 | 18 | 2 | 18 | 46 | \$ 6,790.00 |
| | Conduct Business Impact and Threat and Vulnerability | | | | | | |
| 2 | Analysis | 8 | 24 | 8 | 24 | 64 | \$ 9,640.00 |
| 3 | Identify Essential Functions and Continuity Provisions | 24 | 52 | 2 | 52 | 130 | \$ 19,020.00 |
| 4 | Develop COOP | 8 | 24 | 4 | 24 | 60 | \$ 8,840.00 |
| 5 | Testing and Exercise | 18 | 18 | 4 | 18 | 58 | \$ 8,990.00 |
| 6 | Review and Update | 8 | 12 | 4 | 12 | 36 | \$ 5,540.00 |
| 7 | Project Close-out and Final Reporting | 8 | 8 | 0 | 8 | 24 | \$ 3,640.00 |
| Total Hours/Labor Category | | 82 | 156 | 24 | 156 | | \$ 62,460.00 |
| Total Cost/Labor Category | | \$14,760 | \$24,960 | \$4,800 | \$17,940 | | |
| | | Total Labor Cost | | | | | \$ 62,460.00 |
| | | ODC (*) | | | | | \$ 6,246.00 |
| | | Total Labor and Expenses | | | | | \$ 68,706.00 |

| | | | | | |
|--|-----------------|---|--|--|-----------------------|
| Request for Proposals | |  Marshall University Office of Purchasing One John Marshall Drive Huntington, WV 25755-4100 | | Proposal # MU17CONTSERV | |
| | | Direct all inquiries regarding this order to: (304) 696-2823 | | | |
| Vendor: | | Phone: Fax: | | For information Purchasing contact: Jill Burcham burcham@marshall.edu and purchasing@marshall.edu Phone: (304) 696-2823 | |
| Sealed requests for bids furnishing services described below will be received by the institution. TO RECEIVE CONSIDERATION FOR AWARD, UNLESS OTHERWISE NOTED, THE BID WILL BE SUBMITTED IN BONFIRE ON OR BEFORE THE DATE AND TIME SHOWN FOR THE BID OPENING. The institution reserves the right to accept or reject bids separately or as a whole, to reject any or all bids, to waive informalities or irregularities and to contract as the best interests of the institution may require. BIDS ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS AS SET FORTH HEREIN. | | | | | |
| DATE 7/18/2016 | | DELIVERY IS REQUIRED NO LATER THAN | | DEPARTMENT REQUISITION NO. | |
| | | | | BIDS OPEN: 3:00 PM on August 25, 2016 | |
| | | | | BIDDER MUST ENTER DELIVERY DATE FOR EACH ITEM BID | |
| Item # | Quantity | Description | | | Unit Price |
| | | <u>Request for Proposals</u> Marshall University will accept proposals for the following until 3:00 p.m. on August 25, 2016. Questions and response section Project Name: Continuity of Services Plan Bid Opening Time / Date: August 25, 2016 3:00 PM. | | | Extended Price |
| Total | | | | | |

To the Purchasing Department,


In compliance with the above, the undersigned offers and agrees, if this offer is accepted within _____ calendar days (30 calendar days unless a different period is inserted by the purchaser) from the bid open date, specified above, to furnish any or all items upon which prices are offered, at the price set opposite each item, delivered at the designated point(s), within the time specified.

| | | | |
|--|--|---|--|
| Bidder guarantees shipment from _____ _____ within _____ days | | Bidder's name Vendor <u>Witt O'Brien's, LLC</u> | |
| FOB _____ After receipt of order at address shown | | Signed By <u></u> | |
| Terms _____ | | Typed Name <u>Sudarshan Magadi</u> | |
| | | Title <u>Chief Information Officer, Technology Services</u> | |
| | | Street Address <u>1201 15th Street NW, Suite 600</u> | |
| | | City/State/Zip <u>Washington, DC 20005</u> | |
| | | Date <u>August 25, 2016</u> Phone <u>202-585-0780</u> | |
| | | Fein <u>27-2783923</u> | |

| | | | | | |
|--|-----------------|---|--|--|---------------------------|
| Request for Proposals | |  Marshall University Office of Purchasing One John Marshall Drive Huntington, WV 25755-4100 Direct all inquiries regarding this order to: (304) 696-2823 | | Proposal # MU17CONTSERV ADDENDUM#1 | |
| Vendor: | | Phone: | | For information | |
| | | Fax: | | Purchasing contact: Jill Burcham burcham@marshall.edu and purchasing@marshall.edu Phone: (304) 696-2823 | |
| Sealed requests for bids furnishing services described below will be received by the institution. TO RECEIVE CONSIDERATION FOR AWARD, UNLESS OTHERWISE NOTED, THE BID WILL BE SUBMITTED IN BONFIRE ON OR BEFORE THE DATE AND TIME SHOWN FOR THE BID OPENING. The institution reserves the right to accept or reject bids separately or as a whole, to reject any or all bids, to waive informalities or irregularities and to contract as the best interests of the institution may require. BIDS ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS AS SET FORTH HEREIN. | | | | | |
| DATE 7/28/2016 | | DELIVERY IS REQUIRED NO LATER THAN | | DEPARTMENT REQUISITION NO. | |
| | | | | BIDS OPEN: 3:00 PM on August 25, 2016 | |
| | | | | BIDDER MUST ENTER DELIVERY DATE FOR EACH ITEM BID | |
| Item # | Quantity | Description | | | Unit Price |
| | | <u>Request for Proposals – Addendum # 1</u> The purpose of this addendum is to modify/clarify proposal specifications as per the attached documents. Insert the attached information to include additional details on the Summary, Project Purpose/Description, Project Scope, Cost Response, Proposal Submissions and Evaluation Criteria Remove the statement "see Attachment I", found in section 3.4.3 3.4.3. Respond clearly and concisely to all questions without referring to preprinted materials (i.e., see Attachment I, etc.) as your response. Add Exhibit B - organization chart | | | Extended Price |
| Total | | | | | |

To the Purchasing Department,
 In compliance with the above, the undersigned offers and agrees, if this offer is accepted within _____ calendar days (30 calendar days unless a different period is inserted by the purchaser) from the bid open date, specified above, to furnish any or all items upon which prices are offered, at the price set opposite each item, delivered at the designated point(s), within the time specified.

| | |
|--|--|
| Bidder guarantees shipment from _____ _____ within _____ days FOB _____ After receipt of order at address shown Terms _____ | Bidder's name Vendor <u>Witt O'Brien's, LLC</u> Signed By <u>[Signature]</u> Typed Name <u>Sudarshan Magadi</u> Title <u>Chief Information Officer, Technology Services</u> Street Address <u>1201 15th Street NW, Suite 600</u> City/State/Zip <u>Washington, DC 20005</u> Date <u>August 25, 2016</u> Phone <u>202-585-0780</u> Fax <u>27-2783923</u> |
|--|--|

| | | | | | | | | | | | |
|--|---------------------------|---|--|--|-------------------|---------------------------|-------------------|--------------------|-------------------------|-----|--|
| Request for Proposals | |  Marshall University Office of Purchasing One John Marshall Drive Huntington, WV 25755-4100 | | Proposal # | | | | | | | |
| | | Direct all inquiries regarding this order to: (304) 696-2823 | | MU17CONTSERV ADDENDUM#2 | | | | | | | |
| Vendor: | | Phone: | | For information | | | | | | | |
| | | Fax: | | Purchasing contact: Jill Burcham burcham@marshall.edu and purchasing@marshall.edu Phone: (304) 696-2823 | | | | | | | |
| Sealed requests for bids furnishing services described below will be received by the Institution. TO RECEIVE CONSIDERATION FOR AWARD, UNLESS OTHERWISE NOTED, THE BID WILL BE SUBMITTED IN BONFIRE ON OR BEFORE THE DATE AND TIME SHOWN FOR THE BID OPENING. The Institution reserves the right to accept or reject bids separately or as a whole, to reject any or all bids, to waive informalities or irregularities and to contract as the best interests of the Institution may require. BIDS ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS AS SET FORTH HEREIN. | | | | | | | | | | | |
| DATE 8/23/2016 | | DELIVERY IS REQUIRED NO LATER THAN | | BIDS OPEN: 3:00 PM on September 19, 2016 | | | | | | | |
| | | DEPARTMENT REQUISITION NO. | | BIDDER MUST ENTER DELIVERY DATE FOR EACH ITEM BID | | | | | | | |
| Item # | Quantity | Description | | | Unit Price | | | | | | |
| | | Addendum # 2 Project Name: Continuity of Services Plan Opening Date/Time: September 19, 2016 at 3:00 p.m. The purpose of this addendum is to provide answers to questions received from prospective bidders and to change dates in the timetable of activities. 3.6 Timetable of Activities <table border="1"> <tr> <td>Addenda Published</td> <td>#1- 7/28/16, #2 - 8/26/16</td> </tr> <tr> <td>Proposal Due Date</td> <td>September 19, 2016</td> </tr> <tr> <td>Contract Effective Date</td> <td>TBD</td> </tr> </table> | | | Addenda Published | #1- 7/28/16, #2 - 8/26/16 | Proposal Due Date | September 19, 2016 | Contract Effective Date | TBD | |
| Addenda Published | #1- 7/28/16, #2 - 8/26/16 | | | | | | | | | | |
| Proposal Due Date | September 19, 2016 | | | | | | | | | | |
| Contract Effective Date | TBD | | | | | | | | | | |
| Total | | | | | | | | | | | |

To the Purchasing Department, 120 consecutive
 In compliance with the above, the undersigned offers and agrees, if this offer is accepted within _____ calendar days (30 calendar days unless a different period is inserted by the purchaser) from the bid open date, specified above, to furnish any or all items upon which prices are offered, at the price set opposite each item, delivered at the designated point(s), within the time specified.

Bidder guarantees shipment from _____
 _____ within _____ days

FOB _____ After receipt of order at address shown

Terms _____

Bidder's name Vendor Witt O'Brien's, LLC
 Signed By [Signature]
 Typed Name Sudarshan Magadi
 Title Chief Information Officer
 Street Address 1201 15th Street, NW, Suite 600
 City/State/Zip Washington, DC 20005
 Date August 26, 2016 Phone 202-585-0780
 Fax 27-2783923

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

MANDATE: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: Witt O'Brien's, LLC

Authorized Signature: [Signature] Date: August 25, 2016

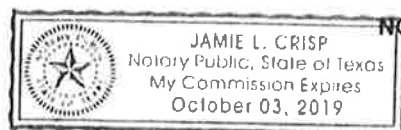
State of Texas

County of Harris, to-wit:

Taken, subscribed, and sworn to before me this 25th day of August, 2016.

My Commission expires October 03, 2019.

AFFIX SEAL HERE



NOTARY PUBLIC

[Signature]
Purchasing Affidavit (Revised 08/01/2015)



State of West Virginia
DRUG FREE WORKPLACE CONFORMANCE AFFIDAVIT
West Virginia Code §21-1D-5

STATE OF WEST VIRGINIA,

COUNTY OF Harris, TO-WIT:

I, Sudarshan Magadi, after being first duly sworn, depose and state as follows:

1. I am an employee of Witt O'Brien's, LLC; and,
(Company Name)
2. I do hereby attest that Witt O'Brien's, LLC
(Company Name)

maintains a written plan for a drug-free workplace policy and that such plan and policy are in compliance with **West Virginia Code §21-1D**.

The above statements are sworn to under the penalty of perjury.

Printed Name: Sudarshan Magadi

Signature: 

Title: Chief Information Officer, Technology Services

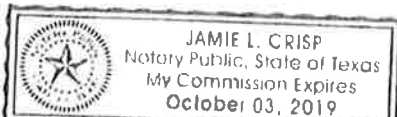
Company Name: Witt O'Brien's, LLC

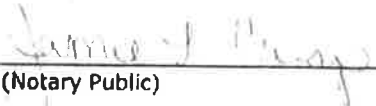
Date: August 25, 2016

Taken, subscribed and sworn to before me this 25th day of August, 2016.

By Commission expires October 03, 2019

(Seal)




(Notary Public)

THIS AFFIDAVIT MUST BE SUBMITTED WITH THE BID IN ORDER TO COMPLY WITH WV CODE PROVISIONS. FAILURE TO INCLUDE THE AFFIDAVIT WITH THE BID SHALL RESULT IN DISQUALIFICATION OF THE BID.

MU-96
Rev. 8/17

AGREEMENT ADDENDUM

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** – Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Any disputes brought by Vendor arising out of the agreement and any counter-claims or cross-claims by Marshall University ("Marshall") shall be presented to the West Virginia Court of Claims. Any disputes brought by Marshall University ("Marshall") arising out of the agreement shall be presented in the Circuit Court of Cabell County, West Virginia, or other appropriate Court having jurisdiction over the matter.
2. **HOLD HARMLESS** – Any provision requiring Marshall to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** – The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** – Provisions in the agreement requiring Marshall to pay taxes are deleted. As a State entity, Marshall is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will Marshall file any tax returns or reports on behalf of Vendor.
5. **PAYMENT** – Any reference to prepayment are deleted. Payment will be in arrears.
6. **INTEREST** – Any provision for interest or charges on late payments is deleted. Marshall has no statutory authority to pay interest or late fees.
7. **NO WAIVER** – Any language in the agreement requiring Marshall to waive any rights, claims or defenses is hereby deleted.
8. **FISCAL YEAR FUNDING** – Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, Marshall agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which Marshall may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** – Any provisions limiting Marshall's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **FEES OR COSTS** – Marshall recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** – Notwithstanding any clause to the contrary, Marshall reserves the right to assign the agreement to another State of West Virginia Agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of the Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** – Marshall, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages to a certain dollar amount or to the amount of the agreement is hereby deleted. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** – Marshall shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Marshall agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. **TERMINATION CHARGES** – Any provision requiring Marshall to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. Marshall may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by Marshall prior to the end of any current agreement term.
16. **RENEWAL** – Any references to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** – Any provision requiring Marshall to purchase insurance for Vendor's property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.
18. **RIGHT TO NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, Marshall does recognize a right of repossession with notice.
19. **ACCELERATION** – Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** – Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** – All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties.
22. **DELIVERY** – All deliveries under the agreement will be FOB destination unless otherwise stated in the State's original solicitation. Any contrary delivery terms are hereby deleted.
23. **PUBLICITY** – Vendor shall not, in any way or in any form, publicize or advertise the fact that Vendor is supplying goods or services to Marshall without the express written consent of Marshall.

24. **UNIVERSITY MARKS** – Vendor shall not, in any way or in any form use Marshall's trademarks or other intellectual property without prior written consent of Marshall.
25. **INTELLECTUAL PROPERTY** – Marshall will own all rights, title and interest in any and all intellectual property rights created in the performance or otherwise arising out of the agreement, and Vendor will execute any assignments of other documents necessary for Marshall to perfect such rights, provided that, for research collaboration pursuant to subcontracts under sponsored research agreements, intellectual property rights will be governed by the terms of the grant or contract to Marshall to the extent such intellectual property terms to apply to subcontractors.
26. **FERPA**. Vendor agrees to abide by the Family Education Rights and Privacy Act of 1974 ("FERPA"). To the extent that Vendor receives personally identifiable information from education records as defined in (FERPA), Vendor agrees to abide by the limitations on re-disclosure set forth in which states that the officers, employees and agents of a party that receives education record information from Marshall may use the information, but only for the purposes for which the disclosure was made

ACCEPTED BY:
MARSHALL UNIVERSITY

OFFICE OF PURCHASING

Signed ☒ Stephanie CP Smith

Title: Director of Purchasing/CPO

Date: November 14, 2017

VENDOR

Company Name: Witt O'Brien's

Signed: ☒ [Signature]

Title: Chief Operating Officer

Date: 11/20/17

Approved as to form

Jendonnae L. Houdyschell
Digitally signed by Jendonnae L. Houdyschell
Date: 2017.11.07 10:50:26 -05'00'

Marshall University
Cloud Computing Contract Addendum

"Institution" as used herein means Marshall University, its Board of Governors, Colleges, Schools, and Departments.

"Vendor" as used herein means Witt O'Brien's

(Insert Vendor Name Here)

Definitions

"Confidential Information" is defined as any and all information whose collection, disclosure, protection, and disposition is governed by state or federal law or regulation, particularly information subject to the Family Educational Rights and Privacy Act (FERPA), the Gramm-Leach-Bliley Act (GLBA), or Marshall University Policy [<http://www.marshall.edu/board/board-of-governors-policies/>]. This information includes, but is not limited to, Social Security numbers, student records, financial records regarding students (or their parents or sponsors), financial and personal information regarding Marshall University employees, and other personally identifiable information identified by law.

"Covered Data" includes any institutional data defined as "confidential information".

"Institution Data" includes data uploaded by users of the service and communications between the user, the Institution, and Vendor.

"Notification Event" includes Vendor system that may access, process or store University data is subject to unintended access. Unintended access includes compromise by a computer worm, search engine web crawler, password compromise or access by an individual or automated program due to a failure to secure a system or adhere to established security procedures.

"Vendor User" includes the Vendor and its employees, agents, contractors, and other persons associated with Vendor.

Use of the Data

The Vendor agrees that data provided to them during the provision of service shall be used only and exclusively to support the service and service execution, and not for any other purpose. Unless expressly permitted by the written consent of an Institution official authorized to give such consent, Vendor and its employees, agents, contractors, and other persons associated with Vendor (collectively, the "Vendor Users") are only permitted to use, reuse, distribute, transmit, manipulate, copy, modify, access, or disclose the Institution Data to the extent necessary for Vendor to implement and maintain the information as set forth in this Addendum. Except as otherwise specifically provided for in this Agreement, the Vendor agrees that Institution Data will not be shared, sold, or licensed with any third-

party, except approved sub-contractors, without the express written approval of the Institution and the Senior Vice President for Information Technology.

Vendor will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access, or disclosure of Institution data and any non-compliance with the data privacy and security requirements by Vendor Users.

Data Protection

Upon termination, cancellation, expiration or other conclusion of the Agreement, Vendor shall return the Covered Data to Institution unless Institution requests that such data be destroyed. This provision shall also apply to all Covered Data that is in the possession of subcontractors or agents of Vendor. Vendor shall complete such return or destruction not less than thirty (30) days after the conclusion of this Agreement. Within such thirty (30) day period, Vendor shall certify in writing to Institution that such return or destruction has been completed.

Compliance with Federal, State, and Local Laws and Regulatory Requirements; Vendor's product must be compliant with any Federal, State, and Local privacy laws or regulations applicable to the Institution, including but not limited to: the Family Educational Rights and Privacy Act (FERPA) (Pub.

L. No. 93-380 (1974), codified at 20 U.S.C. § 1232g); the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. No. 104-191, § 264 (1996), codified at 42 U.S.C. § 1320d; Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. § 160 (2002), 45 C.F.R. § 164 subpts. A, E (2002); the Gramm-Leach-Bliley Act (GLBA) (Pub. L. No. 106-102 (1999), privacy protections are codified at 15 USC § 6801 et seq.).

Vendor agrees that it may create, have access to, or receive from or on behalf of Institution or students, or have access to, records or record systems that are subject to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. Section 1232g (collectively, the "FERPA Records"). Vendor represents, warrants, and agrees that it will: (1) hold the FERPA Records in strict confidence and will not use or disclose the FERPA Records except as (a) permitted or required by this Agreement, (b) required by law, or (c) otherwise authorized by Institution in writing; (2) safeguard the FERPA Records according to commercially reasonable administrative, physical and technical standards that are no less rigorous than the standards by which Vendor protects its own Confidential Information; and (3) continually monitor its operations and take any action necessary to assure that the FERPA Records are safeguarded in accordance with the terms of this Agreement. At the request of Institution, Vendor agrees to provide Institution with a written summary of the procedures Vendor uses to safeguard the FERPA Records.

Vendor agrees to adhere to the additional FERPA requirements listed at the following web address: [\[http://ptac.ed.gov/sites/default/files/data-sharing-agreement-checklist.pdf\]](http://ptac.ed.gov/sites/default/files/data-sharing-agreement-checklist.pdf) if any of the data is used for research or a longitudinal study.

Notification of Security Incidents

Vendor, within one day of discovery, shall report to Institution any use or disclosure of Confidential Information not authorized by this Addendum or in writing by Institution. Vendor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Vendor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Vendor has taken or shall take to prevent future similar unauthorized use or disclosure. Vendor shall provide such other information, including a written report, as reasonably requested by Institution. Vendor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally-identifiable information or other event requiring notification. In the event of a breach of any of Vendor's security obligations or other event requiring notification under applicable law ("Notification Event"), Vendor agrees to assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless and defend the Institution and its Board of Governors, officers, employees, agents and representatives from and against any claims, damages, or other harm related to such Notification Event.

Institutional Marks Protection

Use of Institution name, marks, or logos: All use by Vendor of Institution name, marks, and content must be approved in writing by Institution and the Senior Vice President of Communications. Institution reserves the right to review all uses of its name, marks or logos prior to their use by Vendor.

Indemnification

Vendor shall indemnify, defend and hold Institution harmless from all lawsuits, claims, liabilities, damages, settlements, or judgments, including Institution's costs and attorney fees, which arise as a result of Vendor's negligent acts, omissions or willful misconduct. Neither party shall be liable for any and all consequential, exemplary, indirect, punitive, or special damages of any kind.

ACCEPTED BY:

MARSHALL UNIVERSITY

By: X Stephanie CP Smith
 Title: Director of Purchasing / CPO
 Date: November 14, 2017

VENDOR WITT O'BRIENS

By: X [Signature]
 Title: Chief Operating Officer
 Date: 11/20/2017

Approved as to form

Jendonnae L. Houdyschell
 Digitally signed by Jendonnae L. Houdyschell
 Date: 2017.11.07 10:52:52 -05'00'
 Cloud Contract Addendum