

## INDEPENDENT VERIFICATION & VALIDATION SERVICES of MAJOR IT DEVELOPMENT PROJECTS CONTRACT

THIS CONTRACT (the "Contract") is made this 30<sup>th</sup> day of March, 2006 by and between VERISOLV TECHNOLOGIES, INC. and the STATE OF MARYLAND, acting through the DEPARTMENT OF BUDGET AND MANAGEMENT, OFFICE OF INFORMATION TECHNOLOGY.

In consideration of the promises and the covenants herein contained, the parties agree as follows:

### 1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 "Contractor" means VeriSolv Technologies, Inc. whose principal business address is 1900 Campus Commons Drive, Suite 100, Reston VA 20191.
- 1.2 "Department" means the Maryland Department of Budget and Management.
- 1.3 "Financial Proposal" means the Contractor's Financial Proposal dated September 7, 2005.
- 0.3 "Procurement Officer (PO)" means Gisela Blades of the Department.
- 0.3 "Contract Manager (CM)" means Robert Krauss of the Department.
- 1.6 "RFP" means the Request for Proposals for Independent Verification & Validation Services of Major IT Development Projects, Project # *F10R6200027*, dated 08/09/2005, as amended.
- 1.7 "State" means the State of Maryland.
- 0.7 "Technical Proposal" means the Contractor's Technical Proposal, dated September 7, 2005.
- 0.7 "Task Order (TO)" means a description by the State of the individual projects under the RFP.

### 2. Scope of Work

2.1 The Contractor shall provide the independent verification and validation services described in the RFP (the "Services"). The Services shall be provided in accordance with this Contract and the following Exhibits, which are attached hereto and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

- Exhibit A – Request for Proposals –Project No. *F10R6200027*
- Exhibit B – Contractor's Technical Proposal, dated September 7, 2005
- Exhibit C - Contractor's Financial Proposal, dated September 7, 2005
- Exhibit D – State Contract Affidavit, executed by the Contractor and dated

2.2 The Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

### 3. Time for Performance

Unless terminated earlier as provided in this Contract, the Contractor shall provide Services in accordance with this RFP. The term of this Contract is for a period of *three (3) years*, commencing on March 2, 2006 and terminating on March 1, 2009. Any TOs that begin before the ending date of the Contract shall be governed by all the terms of this Contract.

### 4. Considerations and Payment

4.1 In consideration of the satisfactory performance of the requirements of this Contract, the State shall pay the Contractor in accordance with the labor hour rates established in *Exhibit C*, in no event to exceed without the express prior written approval of the Procurement Officer and subject to any other State approval requirements. TOs shall include a not-to-exceed ceiling for payments. The Contractor shall notify the Contract Manager, in writing, within two (2) weeks when payments reach **seventy-five (75) percent** of the not-to-exceed ceiling amount of this contract. Any work performed by the Contractor in excess of the ceiling amount of any TO without the prior written approval of the CM is at the Contractor's risk of non-payment. Payments under TOs issued on a fixed price basis shall be limited to the price included in the TO, regardless of the actual cost to the Contractor.

1.0 Payments to the Contractor shall be made in accordance with the TO and no later than **thirty (30) days** after the State's receipt of a proper invoice for performance by the Contractor, acceptance by the State of such performance, and pursuant to the terms of this RFP. TOs may specify periodic payments based on deliverables or stages of completion. A TO may specify that a portion of the payments due will be withheld until completion of the TO. The amount withheld from each payment shall be paid to the Contractor within thirty (30) days of acceptance of all deliverables required under the TO and receipt from the Contractor of a release in a form prescribed by the State for any claims arising out of or related to the TO.

2.0 Each invoice for Services rendered must include the Contractor's Federal Tax Identification Number which is [REDACTED]. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited. The final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

3.0 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

3.1 The State will use electronic funds transfer to pay the Contractor for Services pursuant to any TO pursuant to this Contract and any other State payments due Contractor unless the State's Comptroller's Office grants the Contractor an exemption.

3.1 Contractor's e-Maryland Marketplace registration number is \_119 965  
3.1

3.1 Contractor's Small Business Reserve registration number is SB05-1352.

## **5. Rights to Records**

5.1 The Contractor agrees that all documents and materials, including but not limited to software, reports, drawings, studies, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, schedules, data, and all other work products created by the Contractor under this RFP shall become the exclusive property of the State, and may be distributed, reproduced, or otherwise used without restriction and without compensation to the Contractor at the sole discretion of the State.

5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this contract, and Services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

5.3 The Contractor shall report to the Contract Manager, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.

5.4 The Contractor shall not affix any restrictive markings upon any data and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

## **6. Patents, Copyrights, Intellectual Property**

6.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

6.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark,

copyright, or trade secret. If a third party claims that a product infringes that party's patent or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a court finally awards, provided the State (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in section 6.3 below.

6.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: (a) procure for the State the right to continue using the applicable item, (b) replace the product with a non-infringing product substantially complying with the item's specifications, or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

## **7. Confidentiality**

Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party, (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

## **8. Loss of Data**

In the event of loss of any State data or records where such loss is due to the intentional act of omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Manager. The Contractor shall ensure that all data is backed up and is recoverable by the Contractor.

## **9. Non-Hiring of Employees**

No official or employee of the State, as defined under State Government Article, 15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

## **10. Disputes**

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies), as from time to time amended. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement

Officer's decision. Unless a lesser period is provided by applicable statute or regulation, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

## **11. Maryland Law**

10.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

9.1 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or the software license acquired hereunder.

9.1 Any and all references to the Annotated Code of Maryland contained in this Contract shall be construed to refer to such Code sections as from time to time amended.

## **12. Nondiscrimination in Employment**

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

## **13. Contingent Fee Prohibition**

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this Contract.

## **14. Non-availability of Funding**

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

**15. Termination for Cause**

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

**16. Termination for Convenience**

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

**17. Delays and Extensions of Time**

The Contractor agrees to perform this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances, regardless of cause, in the performance of Services under this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

**18. Suspension of Work**

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

**19. Pre-Existing Regulations**

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

**20. Financial Disclosure**

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

**21. Political Contribution Disclosure**

The Contractor shall comply with Election Law, Sections 14-101 through 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall, file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

**22. Retention of Records**

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three (3) years after final payment by the State under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, the Contract Manager or the Contract Manager's designee, at all reasonable times. The Contractor shall, upon request by the Department, surrender all and every copy of documents needed by the State, including but not limited to itemized billing documentation containing the dates, hours spent and work performed by Contractor and its subcontractors under the Contract. The Contractor agrees to cooperate fully in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.

**23. Warranties**

The Contractor hereby represents and warrants that:

A. It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

B. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and,

D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

#### **24. Cost and Price Certification**

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of the Financial Proposal.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its offer, was inaccurate, incomplete, or not current.

#### **25. Subcontracting; Assignment**

The Contractor may not subcontract any portion of the Services provided under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer, any such approval to be in the State's sole and absolute subjective discretion; provided however, a Contractor may assign monies receivable under a TO after due notice to the State. Any such subcontract or assignment shall include the terms of Sections 9 and 11 through 24 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

#### **26. Indemnification**

1.8 The Contractor shall hold harmless and indemnify the State from and against liability for any and all damages, costs, liabilities and expenses (including reasonable attorney's fees and disbursements), losses, suits, actions, or claims of any character in connection with, arising from or relating to the performance of the Contractor or its subcontractors under this Contract and any TO.

1.9 The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Agreement against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract and any TO.

26.3 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract and any TO.

10.2 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to the Contractor's performance under this Contract and any TO.

## 27. Limitation of Liability

27.1 For breach of this Contract, negligence, misrepresentation or any other contract or tort claim, the Contractor shall be liable as follows:

A. For infringement of patents and copyrights as provided in Section 6 ("Patents, Copyrights, Intellectual Property") of this Contract;

B. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property;

C. For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract, regardless of the form, Contractor's liability shall be limited to three (3) times the total dollar amount invoiced under this Contract up to the date of settlement or final award of any such claim. Third party claims arising under Section 26 ("Indemnification"), of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's liability for third party claims arising under Section 26 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 26.

## 28. Administrative

28.1 Procurement Officer. The work to be accomplished under this Contract shall be performed under the direction of the Procurement Officer. All matters relating to the interpretation of this Agreement shall be referred to the Procurement Officer for determination.

28.2 Notices. All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:

If to the State:

Robert Krauss  
Office of Information Technology  
Maryland Department of Budget & Management  
45 Calvert Street  
Annapolis, MD 21401

If to the Contractor:

Mr. Rene Curbelo, President  
1900 Campus Commons Drive, Suite 100  
Reston, VA 20191-1535

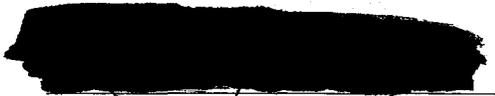
## 29. Guarantee of Performance by \_\_\_\_\_ . (If Applicable)

[corporate name of parent corporation] hereby guarantees absolutely the full, prompt and complete performance by " [subsidiary/the Contractor]" of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and

all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations and liabilities. "[corporate name of parent]" may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State. "[corporate name of parent]" further agrees that if the State brings any claim, action, suit or proceeding against "[subsidiary]", "[corporate name of parent]" may be named as a party, in its capacity as Absolute Guarantor.

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

VERISOLV TECHNOLOGIES, INC.



By: René Curbelo

03/21/2006  
Date

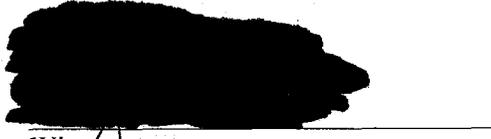
  
Witness

MARYLAND DEPARTMENT OF  
BUDGET AND MANAGEMENT



By:

March 30, 2006  
Date

  
Witness

Approved for form and legal sufficiency this 27<sup>th</sup> day of March, 2006.

  
Assistant Attorney General