

ADDITIONAL CONTRACT TERMS AND CONDITIONS

1. **Contract Modifications:** Control of the design and administration of the Contract is the exclusive responsibility of MSDE. MSDE reserves the right to change components of the design and/or substitute tasks on an equal basis should the need arise after the Contract award. These substituted tasks which are on an equal basis with the tasks in the Contract shall be subject to the following conditions: i. Changes in tasks will not increase the overall scope of work described in the solicitation nor the amount of the Contract award. ii. Changes will not be suggested for any specific task once the Contractor has begun work on it. iii. All changes will be submitted to the Contractor in writing by MSDE. Any changes to the Contract requested by MSDE or by the Contractor that will affect the scope/cost of the Contract or that are made after the work has begun will be negotiated between MSDE and the Contractor in the following fashion: i. A written request shall be made by either party. ii. The request shall be relayed to any other contractual party impacted by the proposed change. iii. Written acceptance shall be issued by the other party(ies) with cost, time line, and/or task changes negotiated by all parties. Changes shall not be binding until such written acceptance has been completed by all parties and approved by MSDE, as well as other State approvals as required. Amendments may not significantly change the scope of this Contract (including the Contract price).
2. **Non-Hiring of Officials and Employees:** No official or employee of the State of Maryland, as defined under State Government Article, § 15-102, Annotated Code of MD, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall during the pendency of 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.
3. **Disputes:** This Contract shall be subject to the provisions of State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of MD and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of this Contract in accordance with the procurement officer's decision.
4. **Maryland Law Prevails:** The laws of Maryland shall govern the interpretation and enforcement of this Contract. The Maryland Uniform Computer Information Transactions Act (Md. Code Ann., Commercial Law Article, Title 22) does not apply to this Contract or any software licenses acquired hereunder.
5. **Non-discrimination 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, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (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.
6. **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 business, to solicit or secure the 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.
7. **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 this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.
8. **Termination for Default:** 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.
9. **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).
10. **Anti-Bribery:** The Contractor certifies that, to the Contractor's best knowledge, neither the Contractor, nor (if the Contractor is a corporation or partnership) any of its officers, directors, partners, or controlling stockholders; nor any employee of the Contractor who is directly involved in the business's contracting activities, has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or of the United States.
11. **Variations on Estimated Quantities:** () Required. Items deliverable in multiple quantities shall not vary from estimated quantities in an amount exceeding five percent. No adjustments to the unit prices shall be made based upon any variations in estimated quantities.
12. **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.
13. **Pre-Existing Regulations:** In accordance with the provisions of Md. Code Ann., State Finance and Procurement Article § 11-206, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract.
14. **Financial Disclosure:** The Contractor shall comply with the provisions of Md. Code Ann., State Finance and Procurement Article § 13-221, which requires that every person that enters into contracts, leases, or other agreements with the State or its agencies during the calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State certain specified information to include disclosures of beneficial ownership of the business.
15. **Political Contribution Disclosure:** The Contractor shall comply with Md. Code Ann., Election Law Article, Title 14, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall, file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website: http://www.elections.state.md.us/campaign_finance/index.html.
16. **Retention of Records:** The Contractor shall retain and maintain all records and documents relating to this Contract for three years after the final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the procurement officer or designee, at all reasonable times. This section shall survive expiration or termination of this contract.
17. **Compliance with Laws:** The Contractor hereby represents and warrants that it: A. is qualified to do business in the State of Maryland and that it will take such action, as from time to time hereafter, may be necessary to remain so qualified; B. is not in arrears with respect to payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract; C. shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and D. shall obtain, at its expense, all licenses, permits, insurance, and government approvals, if any, necessary to the performance of its obligations under this Contract.
18. **Compliance with ADA:** Contractor shall comply with the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et. seq. and applicable regulations. To the extent required by the ADA, Contractor's facilities, services, and programs shall be accessible to persons with disabilities. Contractor shall bear sole responsibility for assuring that its activities under this Contract conform to the ADA. Contractor shall indemnify and hold the State harmless in any administrative proceeding or other actions brought pursuant to the ADA for all damages, attorney's fees, litigation expenses, and costs, if such action or proceeding arises from the act of Contractor, Contractor's employees, agents, or subcontractors.
19. **Patents, Copyrights, and Intellectual Property:** If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, 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.
20. **Indemnification:** The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract. 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 performance under this Contract. The indemnification clause shall not be construed to that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees. This section shall survive expiration or termination of this contract.
21. **Delays and Extensions of Time:** The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers."

CONTRACT TERMS AND CONDITIONS

22 Payment of State Obligations: Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor. The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:

- (1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and
- (2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

The State is not liable for interest:

- (1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or
- (2) On any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable."