

# **EXHIBIT 1 – TERMS AND CONDITIONS**

## **JET FUEL TYPE A - TROOPER 6 (EASTON) BPM057326 / 001IT821549**

### **1. INCORPORATION BY REFERENCE:**

All terms and conditions of the solicitation and amendments thereto are made a part of this Contract.

### **2. TAX EXEMPTION:**

The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. Exemption certificates shall be completed upon request. Where a Contractor is required to furnish and install material in the construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland Sales Tax and the exemption does not apply.

### **3. SPECIFICATIONS:**

All materials, equipment, supplies or services shall conform to federal and State laws and regulations and to the specifications contained in this solicitation.

### **4. DELIVERY AND ACCEPTANCE:**

Delivery shall be made in accordance with the solicitation specifications. The State, in its sole discretion, may extend the time of performance for excusable delays due to unforeseeable causes beyond the Contractor's control. The State unilaterally may order in writing the suspension, delay or interruption of performance hereunder. The State reserves the right to test any materials, equipment, supplies, or services delivered to determine if the specifications have been met. The materials listed in the bid or proposal shall be delivered FOB the point or points specified prior to or on the date specified in the bid or proposal. Any material that is defective or fails to meet the terms of the solicitation specifications shall be rejected. Rejected materials shall be promptly replaced. The State reserves the right to purchase replacement materials in the open market. Contractors failing to promptly replace materials lawfully rejected shall be liable for any excess price paid for the replacement, plus applicable expenses, if any.

### **5. 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 or 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.

### **6. NON-DISCRIMINATION IN EMPLOYMENT:**

The Contractor agrees 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 physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment and to post and to cause subcontractors to post conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

### **7. FINANCIAL DISCLOSURE:**

The Contractor shall comply with State Finance and Procurement Article §13-221, Annotated Code of Maryland, which requires that every business that enters into contracts, leases or other agreements with the State and receives in the aggregate \$200,000 or more, during a calendar year shall, within 30 days of the time when the \$200,000 reached, file with the Secretary of State certain specified information to include disclosure of beneficial ownership of the business.

**8. POLITICAL CONTRIBUTION DISCLOSURE:**

The Contractor shall comply with Sections 14-101 through 14-108 of the Election Law Article of the Annotated Code of Maryland, which requires that every person that enters into, during any 12 month period, one or more contracts, or other agreements with the State, a county, or an incorporated municipality, or their agencies, involving a cumulative consideration of at least \$200,000 or more, shall file with the State Administrative Board of Election Laws a statement disclosing contributions to a candidate, or a series of such contributions, in a cumulative amount 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 Administrative Board of Election Laws: (1) before a sale, purchase or execution of a contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding 24 months; and (2) if the contribution is made after sale, purchase or the execution of a contract, then twice a year, throughout the contract term: (a) within 5 days after the end of the 6-month period ending January 31; and (b) within 5 days after the end of the 6-month period ending July 31.

**9. ANTIBRIBERY:**

The Contractor warrants that neither it nor any of its officers, directors, or partners nor any of its employees who are directly involved in obtaining or performing contracts with any public body has been convicted of bribery, attempted bribery, or conspiracy to bribe, under the laws of any state or of the federal government or has engaged in conduct since July 1, 1977, which would constitute bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government.

**10. REGISTRATION:**

Pursuant to §7-201 et seq. of the Corporations and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State shall be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at the State Office Building, Room 803, 301 West Preston St., Baltimore, Maryland 21201. Before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the Department of Assessments and Taxation. The website for the SDAT is <https://www.egov.maryland.gov/businessexpress>, e-mail address is [charterhelp@dat.state.md.us](mailto:charterhelp@dat.state.md.us), and phone numbers for the State Department of Assessments and Taxation are: (410) 767-1340 or (888) 246-5941.

**11. CONTINGENT FEES:**

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

**12. EPA COMPLIANCE:**

Materials, supplies, equipment, or other services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable.

**13. OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA):**

All materials, supplies, equipment or services supplied as a result of this contract shall comply with the applicable U.S. and Maryland Occupational Safety and Health Act Standards.

**14. 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. 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).

**15. TERMINATION FOR CAUSE (DEFAULT):**

When the Contractor has not performed or has unsatisfactorily performed the contract, payment shall be withheld at the discretion of the State. Failure on the part of a Contractor to fulfill contractual obligations shall be considered just cause for termination of the contract and the Contractor is not entitled to recover any costs incurred by the Contractor 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 21.07.01.11B.

**16. DISPUTES; NOTICES OF CLAIM, OR CLAIMS:**

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). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the contract in accordance with the procurement **officer's** decision.

**17. MULTI-YEAR CONTRACTS:**

If funds are not appropriated or otherwise made available to support continuation in any fiscal year succeeding the first fiscal year, this contract shall terminate automatically as of the beginning or the fiscal year for which funds are not available. The Contractor may not recover anticipatory profits or costs incurred after termination.

**18. INTELLECTUAL PROPERTY:**

Contractor agrees to indemnify and save harmless the State, its officers, agents and employees with respect to any claim, action, cost or judgment for patent infringement, or trademark or copyright violation arising out of purchase or use of materials, supplies, equipment or services covered by this Contract.

**19. MARYLAND LAW PREVAILS:**

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

**20. CONTRACTOR'S INVOICES:**

Contractor agrees to include on the face of all invoices billed to the State, its Taxpayer Identification Number, which is the Social Security Number for individuals and sole proprietors and Federal Employer Identification Number for all other types of organizations.

**21. PAYMENT OF STATE OBLIGATIONS:**

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. 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, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.

Electronic Funds Transfer: This provision on Electronic Funds Transfer applies to contracts of over \$200,000 for which payments are made through the State Comptroller. Electronic funds transfer will be used by the State to pay Contractor for this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption. By submitting a response to this solicitation, the Bidder or Offeror agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption. After award of a contract, the selected Bidder or offeror shall register with the Comptroller of Maryland using the forms required by the Comptroller. For further information go to:

[http://comptroller.marylandtaxes.com/Vendor\\_Services/Accounting\\_Information/Static\\_Files/GADX10\\_Form20150615.pdf](http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Static_Files/GADX10_Form20150615.pdf).

Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption.

**22. PRE-EXISTING REGULATIONS:**

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.

**23. INDEMNIFICATION:**

- 23.1 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.
- 23.2 This indemnification clause shall not be construed to mean 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.
- 23.3 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 Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 23.4 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.
- 23.5 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.
- 23.6 This Section 23 shall survive termination of this Contract.

**24. CONFLICTING TERMS:**

Any proposal for terms in addition to or different from those set forth in this purchase order or any attempt by the Contractor to vary any of the terms of this offer by Contractor's acceptance shall not operate as a rejection of this offer, unless such variance is in the terms of the description, quantity, price or delivery schedule, but shall be deemed a material alteration thereof, and this offer shall be deemed acceptable by the Contractor without the additional or different terms. If this purchase order is an acceptance of a prior offer by the Contractor, the acceptance is expressly conditioned upon Contractor's assent to any additional terms contained herein. The Contractor understands and agrees that the terms and conditions of this purchase order may not be waived.

**25. DRUG AND ALCOHOL-FREE WORKPLACE:**

The Contractor warrants that the Contractor shall comply with COMAR 21.11.08 Drug and Alcohol Free Workplace, and that the Contractor shall remain in compliance throughout the term of this purchase order.

**26. CHANGES - WORK ORDERS:**

**Changes:** The Procurement Officer unilaterally may, at any time, without notice to the sureties, if any, by written order designated or indicated to be an order, make any change in the work within the general scope of the contract, including but not limited to changes:

- In the specifications (including drawings and designs);
- In the method or manner of performance of the work;
- In the State-furnished facilities, equipment, materials, services, or site; or
- Directing acceleration in performance or delivery.

Any other written order or an oral order, including a direction, instruction, interpretation, or determination from the Procurement Officer that causes or constitutes any such change shall be treated as a change order under this clause provided that the Contractor gives the Procurement Officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.

Except as herein provided, no order, statement, or conduct of the Procurement Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.

Subject to paragraph (6) of this subsection, if any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under the contract, whether or not changed by an order, an equitable adjustment shall be made and the contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any order under (2) above shall be allowed for any costs incurred more than twenty (20) days before the Contractor gives written notice as therein required; and provided further, that in the case of defective specifications for which the State is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.

If the Contractor intends to assert a claim for an equitable adjustment under this section, he shall do so in accordance with and subject to the disputes procedures of the contract.

Each contract modification or change order that affects contract price shall be subject to the prior written approval of the Procurement Officer and other appropriate authorities and to prior certification of the appropriate fiscal authority of fund availability and the effect of the modification or change order on the contract budget or total cost. If, according to the certification of the fiscal authority, the contract modification or change order will cause an increase in cost that will exceed budgeted and available funds, the modification or change order may not be made unless sufficient additional funds are made available or the scope of the contract is adjusted to permit its completion within the project budget.

No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment is made under this contract.

As used in this section, "work" means any and all commodities, goods, materials, labor, services, manner or time of delivery or performance, or other elements of performance required to be furnished or supplied by the Contractor under this contract.

**Miscellaneous:** In the event of a dispute between the Department and the Contractor as to whether any work is included in the scope of the contract such that the Contractor would be obligated to provide that work at no additional cost to the State, the Procurement Officer may order the Contractor under this section to perform the work (a "Work Order"). If the Contractor considers such an order to be a change in the scope of the contract entitling the Contractor to additional compensation, a time extension, or other relief, the Contractor must provide the notice required by this section and initiate a claim therefore in accordance with contract requirements. An order of the Procurement Officer, by virtue of being called or referred to as a "change order," does not necessarily constitute a change in the scope of the contract or in the work required under the contract. The Contractor shall not be entitled to additional compensation, a time extension, or other relief for complying with an order of the Procurement Officer if the contract otherwise requires the Contractor to perform as stated in the order.

Upon receipt of a signed written order of the Procurement Officer under this section, the Contractor shall comply with the order promptly, within the requirements of the required completion or delivery time, whether or not the Contractor signs or accepts the change order. Failure to comply with the order in a timely manner shall constitute a breach of the contract and grounds for termination for default or any other remedy available to the State.

The State may issue a unilateral order on the State's terms (including a promise to pay the Contractor a "not to exceed" ("NTE") amount) which the Contractor may then dispute in accordance with the disputes procedures of the contract. Pending resolution of such a dispute, Contractor must proceed diligently with performance of the contract as ordered by the Procurement Officer.

The terms "not to exceed" and "NTE" when used in a change order mean that the amount of the change order (whether an increase or a decrease in the contract amount) will be a reasonable amount not to exceed the amount stated.

**27. RETENTION OF RECORDS:**

The Contractor shall retain and maintain all records and documents relating to this contract for three years after 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.

**28. COMPLIANCE WITH LAWS:**

The Contractor hereby represents and warrants that:

- A. It 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. It is not in arrears with respect to the 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. 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.

**29. COST AND PRICE CERTIFICATION:**

The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

- A. A negotiated contract, if the total contract price is expected to exceed \$100,000, or smaller amount set by the procurement officer; or
- B. A change order or contract modification, expected to exceed \$100,000, or smaller amount set by the procurement officer.

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 agreed upon between the parties, was inaccurate, incomplete, or not current.

**30. BID / PROPOSAL AFFIDAVIT:**

Each Bidder or offeror shall execute and attach to the bid or proposal the affidavit included with this solicitation.

**31. CONTRACT AFFIDAVIT:**

The successful Bidder or Offeror shall execute and deliver to the Procurement Officer prior to the award of the contract the Contract Affidavit included with this solicitation. (The Affidavit also can be found at COMAR 21.07.01.25).

**32. PUBLIC INFORMATION ACT NOTICE:**

Offerors should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the State under the Access to Public Records Act, Title 4 of the General Provisions Article, Annotated Code of Maryland.

**33. MINORITY BUSINESS ENTERPRISE NOTICE:**

Minority Business Enterprises are encouraged to respond to this solicitation.

**34. ARREARAGES:**

By submitting a response to this solicitation, a vendor shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the State of Maryland, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the contract if selected for contract award.

**35. MULTIPLE OR ALTERNATE BIDS:**

Unless multiple or alternate bids are requested in the solicitation, multiple or alternate bids may not be accepted. If the solicitation does not request multiple or alternate bids, if received they will be treated in accordance with COMAR 21.05.02.21.

**36. BPO/PO AS CONTRACT:**

This provision applies to all procurement contracts procured by the **Office of State Procurement** except contracts for the procurement of architectural and engineering services for a price of greater than \$200,000.

As used in this provision, a bid refers to a bid submitted under competitive sealed bidding and to an offer submitted under competitive sealed proposals.

As used in this provision, a Bidder refers to a Bidder under competitive sealed bidding and to an offeror under competitive sealed proposals.

As used in this provision, a solicitation means an Invitation for Bids, a request for proposals, or any other document requesting bids or proposals for procurement by the Department.

The Bidder's execution and submission of a responsive bid constitutes a promise by the Bidder to perform the contract solicited by the Department in accordance with the terms and conditions stated in the solicitation. The bid shall be irrevocable for the period stated in the solicitation or for such longer period as the Bidder and the Department may agree.

Upon acceptance of a bid, the Procurement Officer may issue a Blanket Purchase Order (BPO), in a form to be determined by the Department, to the Bidder accepting the bid and binding the Bidder to a contract. The execution and issuance of a BPO by the Procurement Officer, subject to all necessary approvals, shall constitute acceptance of the bid and final award of the contract. The contract of the parties will be embodied in the contract documents, which shall consist of the executed BPO of the Procurement Officer, including all documents, terms, and conditions incorporated into those documents by the terms of the solicitation, the BPO, the bid, or by operation of law, and the executed bid of the Bidder. If the Procurement Officer issues a BPO, at the option of the Procurement Officer it will not be necessary for the Bidder to execute the BPO or any other form of contract or agreement. The Procurement Officer may require that the parties both execute a single document as the embodiment of the contract between the parties.

In the event of a conflict between provisions of the contract documents, the controlling provisions shall be, in the following order, those of:

The BPO; then

The Solicitation; and then

The Bid.

**37. RETURNED GOODS:**

Contractor(s) shall be entitled to recover reasonable compensation for any and all goods shipped in accordance with authorized agency orders, meeting all contract requirements, and returned by the agency for reasons other than the Contractor's failure to meet contract requirements. Compensation shall be limited to actual unreimbursed costs incurred by the Contractor including, but not limited to, restocking charges, shipping charges, plus reasonable profit. Contractor must provide written proof of claimed compensation. A return of goods covered by this section shall be deemed a partial termination for convenience as to the returned goods, and other contract provisions and principles applicable to a partial termination for convenience shall apply.

### **38. PURCHASES BY OTHER ENTITIES – INDEFINITE QUANTITY CONTRACTS:**

This provision applies to indefinite quantity contracts.

Pursuant to the State Finance and Procurement Article, Section 13-110 of the Annotated Code of Maryland, except as provided in (B) the following entities may purchase materials, supplies, and equipment under this Contract:

- (1) A county or Baltimore City;
- (2) A municipal corporation;
- (3) A governmental agency in the State;
- (4) A public or quasi-public agency that:
  - (I) Receives State money; and
  - (II) Is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;
- (5) A private elementary or secondary school that:
  - (I) Either has been issued a certificate of approval from the State Board of Education or is accredited by the Association of Independent Schools; and
  - (II) Is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; or
- (6) A non-public institution of higher education under Section 17-106 of the Education Article.
  - (A) A private elementary or secondary school or a nonpublic institution of higher education may not purchase religious materials under this contract.
  - (B) The right to purchase under this section shall be in addition to, but not in substitution for, the applicable purchasing power granted to any of the listed entities pursuant to any statutory or charter provision.
- (7) Another State or an agency or other instrumentality of another state.

All purchases under this contract by any such entity as described above which is not a unit or agency of the State of Maryland for which the State of Maryland may be held liable in contract: (1) shall constitute a purchase or contract between the Contractor and that entity only; (2) shall not constitute a purchase or contract of the State of Maryland; (3) shall not be binding or enforceable against the State of Maryland or any of its units or agencies; and (4) may be subject to other terms and conditions agreed to by the Contractor and the purchaser.

Contractor bears the risk of determining whether or not any entity from which the Contractor receives an order under the contract is a unit or agency of the State of Maryland such that the contract may be enforced against the State of Maryland.

### **39. TIE BIDS**

Tie Bids will be decided pursuant to COMAR 21.05.02.14.

### **40. 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.



#### **41. PATENTS, COPYRIGHTS, AND INTELLECTUAL PROPERTY**

All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date of this Contract shall belong to the party that owned such rights immediately prior to the Effective Date ("Pre-Existing Intellectual Property"). If any design, device, material, process, or other item provided by Contractor 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 pursuant to its rights granted under the Contract.

#### **42. 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.

#### **43. 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.

#### **44. USE OF ESTIMATED QUANTITIES (IF APPLICABLE)**

Unless specifically indicated otherwise in the State's solicitation or other controlling documents related to the Scope of Work, any sample amounts provided are estimates only and the Agency named in this contract does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

#### **45. RISK OF LOSS - TRANSFER OF TITLE**

Risk of loss for conforming supplies, equipment, materials and Deliverables furnished to the State hereunder shall remain with the Contractor until such supplies, equipment, materials and Deliverables are received and accepted by the State, following which, title shall pass to the State.

#### **46. COMMERCIAL NON-DISCRIMINATION**

A. As a condition of entering into this Agreement, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under State Finance and Procurement Article, Title 19, Annotated Code of Maryland. As part of this compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

B. The Contractor shall include the provision in §A of this regulation in all subcontracts to the State contract.

C. As a condition of entering into this Agreement, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under State Finance and Procurement Article, Title 19,

Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under State Finance and Procurement Article, Title 19, Annotated Code of Maryland, and to provide any documents relevant to any investigation that is requested by the State. Contractor understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

#### **47. USAGE REPORT:**

A Report shall be furnished by the successful Contractor every hundred –twenty (120) days detailing the purchase of all items on the contract. The report shall be submitted electronically in Excel format. As a minimum, the report shall reflect the contract number, contract item number and description, the dollar volume purchased of each item, agency identification, and the contract total. The report shall be filed within thirty (30) days after the end of each reporting period. Any exception to this mandatory requirement may result in cancellation of the award. Failure to provide the report with the minimum required information may also negate any contract extension clauses. The usage report shall be emailed to the [dgs.statewidecontractsusagereport@maryland.gov](mailto:dgs.statewidecontractsusagereport@maryland.gov).

#### **48. ELECTRONIC TRANSACTION FEE:**

- a. Contractor shall pay an electronic transaction fee to the State in the amount of one percent (1%) of the total contract sales. The electronic transaction fee is calculated based on all sales transacted under the contract, minus any returns or credits. The electronic transaction fee shall not be charged directly to the customer, e.g., as a separate line item, fee or surcharge, but shall be included in the contract's unit prices.
- b. The electronic transaction fee shall be submitted to the Office of State Procurement, Fiscal Services Division, 301 W. Preston Street, Room 1309, Baltimore, MD, 21201, thirty (30) days after the end of each reporting period along with a Monthly Usage Report documenting all contract sales. An excel version of the Monthly Usage Report shall be emailed to [dgs.statewidecontractsusagereport@maryland.gov](mailto:dgs.statewidecontractsusagereport@maryland.gov).
- c. Failure to remit transaction fees in a timely manner or remittance of fees inconsistent with the contract's requirements may result in the State exercising all recourse available under the contract including, but not limited to, a third-party audit of all contract activity. Should an audit be required by the State, the contractor shall reimburse the State for all costs associated with the audit up to \$10,000.00 or one (1%) percent of the contract's estimated annual value, whichever is higher.
- d. Prior to Award, Contractors will be asked to confirm in writing that their unit prices include the one percent (1%) electronic transaction fee.

**CONTRACTOR**  
**Company Name**

**STATE OF MARYLAND**  
**Office of State Procurement**

\_\_\_\_\_  
**By** \_\_\_\_\_ (Seal)

\_\_\_\_\_  
**By** \_\_\_\_\_

\_\_\_\_\_  
(Printed Name and Title)

\_\_\_\_\_  
(Printed Name and Title)

\_\_\_\_\_  
**Signature and Date**

\_\_\_\_\_  
**Signature and Date**