

The University of Maryland Standard Terms and Conditions apply to University of Maryland College Park (UMD) procurements.

**AFFIDAVITS, ADDENDA, AND FEDERAL FLOW DOWNS-** The following affidavits, addenda, and Federal flow downs may apply to this Contract and will automatically attach based upon the nature of the procurement and/or funding source. All Affidavits and Addenda requiring signature must be completed by the Contractor and returned to the UMD Procurement and Business Services and must reference the associated Purchase Order Number or transaction number (if ordered by credit card).

**UMD ACCESSIBILITY ADDENDUM** *(for any and all web-based deliverables (including, but not limited to, off the shelf software, custom developed software, and related goods or services used to create, maintain or update the University's Web pages, Web content, Web-based applications, online instructional content, services and resources.)*

**UMD CONTRACT AND BID/PROPOSAL AFFIDAVITS** *(for all Contracts exceeding \$200,000, Contractor shall execute the Bid/Proposal and Contract Affidavit required by the University, which shall be in substantially the same form as the Maryland forms at the time the Contract is executed by the University. Additional University certifications may be required for Contracts of any dollar amount. Any additional required documents and certifications, not included herein, will be identified and provided by the Procurement Officer as part of the procurement process.)*

**UMD FEDERAL FLOW-DOWN CLAUSES** *(for any Contract funded by a federal contact, grant, or cooperative agreement.)*  
<https://purchase.umd.edu/umd-federal-uniform-guidance-flowdown-provisions> or  
<https://purchase.umd.edu/umd-federal-government-flowdown-provisions>

**UMD SECURE/SENSITIVE DATA ADDENDUM** *(for contracts involving sensitive data, including but not limited to Personal Data and identifiers, FERPA Data, Cardholder or other PCI Data, or Health Information.)*

**UMD PROCUREMENT INSURANCE ADDENDUM** *(for contracts over \$200,000, or for work performed on University premises, or using equipment or facilities owned, occupied or used by the University, or as otherwise required by the University.)*

**SECTION 889 AFFIDAVIT** *(for procurements for equipment/devices or services that include video surveillance, cameras, telecommunications. This federally required affidavit must be completed by the Contractor and returned to the buyer.*

## **UNIVERSITY OF MARYLAND STANDARD TERMS AND CONDITIONS**

### **ANTI-BRIBERY**

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.

### **COMPLIANCE WITH LAWS**

Contractor hereby represents and warrants that:

It is qualified to do business in the State of Maryland (whether a domestic business or a foreign corporation subject to registration under the Corporations and Associates Article of the Maryland Annotated Code) and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

It is not in arrears with respect to the payment of any moneys 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;

It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract, including but not necessarily limited to: Maryland Building Codes, Americans with Disabilities Act, and the Maryland Occupational Safety and Health Act and related regulations; and

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.

### **CONFIDENTIALITY; DISSEMINATION OF INFORMATION**

Contractor shall not release any information related to services or performance of the services under this Contract, nor publish any final reports or documents without the prior written approval of the University. Contractor shall indemnify and hold harmless the State and the University, its officers, agents and employees from all harm which may be incurred by reason of dissemination, publication, distribution or circulation, in any manner whatsoever, of any information, data, documents, or materials pertaining in any way to this Contract by Contractor, its agents or employees.

### **CONFLICTING TERMS AND ORDER OF PRECEDENCE**

Any proposal for terms in addition to or different from those set forth in the Solicitation or Contract 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 Solicitation or Contract is an acceptance of a prior offer by the Contractor,

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the acceptance is expressly conditioned upon Contractor's assent to any additional or different terms contained herein. The Contractor understands and agrees that the terms and conditions of this Solicitation or Contract may not be waived.

In the event of a conflict, the University of Maryland's Terms and Conditions shall take precedence over any terms specifically identified in Contractor's proposal or any other forms or documents provided by Contractor. The University is not, and shall not be, bound by any other terms in or referenced by Contractor's proposal, invoices, form(s), or online terms and conditions unless such terms are specifically incorporated herein.

### **CONTRACTOR'S INVOICES**

Contractor shall include the Purchase Order Number and its Taxpayer Identification Number on the face of each invoice billed to the University. Failure to provide this information on invoicing may result in delayed payment.

### **DELAYS AND EXTENSION OF TIME**

The Contractor agrees to perform 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.

### **DELIVERY AND ACCEPTANCE**

Delivery shall be made in accordance with the specifications in the Solicitation and Contract. The University, in its sole discretion, may extend the time of performance for excusable delays due to unforeseeable causes beyond the Contractor's control. The University unilaterally may order in writing the suspension, delay, or interruption of performance hereunder. The University reserves the right to test any materials, equipment, supplies, or services delivered to determine if the specifications have been met.

Materials shall be delivered FOB to the point or points specified in the bid or proposal, on the date either agreed to in advance or specified in the bid or proposal. Any material that is defective or fails to meet the terms of the specifications may be rejected. Rejected materials shall be promptly replaced. If Contractor fails to promptly replace rejected materials, the University reserves the right to purchase replacement materials in the open market. Contractor shall be liable for costs to replace materials incurred by the University which exceed the bid proposal or Contract price, including expenses such as, but not necessarily limited to, shipping and delivery, if any.

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### **DISPUTES**

Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision.

### **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 Contract.

### **EXPORT CONTROL**

This Contract is subject to US export control regulations including, when applicable, the Export Administration Regulations (EAR), the International Traffic in Arms Regulations (ITAR), and the Office of Foreign Asset Control sanctions programs. Each party is responsible for compliance with applicable export and import regulations, and associated embargo and sanction regulations. If any of the materials or information to be furnished under this Contract is a controlled technology on the US Munitions List of the ITAR, Contractor must contact and receive written approval from the UMD Export Compliance Office (export@umd.edu) prior to acceptance of this Contract.

**FERPA (FAMILY EDUCATION RIGHTS AND PRIVACY ACT)** *(applicable if Contractor will have access to, or be responsible for the storage, maintenance and security of, student personal identifiable information protected under FERPA. See, also, UMD SENSITIVE DATA ADDENDA)*  
The Parties agree to maintain the privacy and security of personally identifiable educational records and health information and to prevent disclosure in compliance with Federal laws.

**GRAMM-LEACH BLILEY ACT OF 1999** *(applicable if Contract pertains to financial services, banking, student loans or financial aid, or debt collection. See, also, UMD SENSITIVE DATA ADDENDA)*

The Contractor agrees that in performing its obligations under this Contract, the Contractor shall comply with all requirements of a non-affiliated third-party who receive a financial institution's consumer or customer information, under the Gramm-Leach-Bliley Act of 1999 and applicable regulations thereto (the "GLB Act"), and other applicable federal and state consumer privacy acts, rules and regulations. Nonpublic personal information shall have the same meaning as that term is defined in the GLB Act.

The Contractor agrees to disclose such nonpublic personal information for the sole purpose of facilitating the Contractor's performance of its duties and obligations under this Contract and will not disclose such nonpublic personal information to any other party unless such disclosure is (i) allowed by the GLB Act and consented to by the Customer, or (ii) compelled by law, in which case the Contractor will provide notice of such disclosure to the Customer.

The Contractor represents and warrants that it will, for so long as it retains nonpublic personal information, implement and maintain in place the necessary information security policies and procedures for (i) protecting the confidentiality of such nonpublic personal information, (ii) protecting against any anticipated threats or hazards to the security or integrity of such

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nonpublic personal information, and (iii) protecting against the unauthorized access to or use of such nonpublic personal information. These terms apply to all subcontractors employed by the Contractor who perform work under the scope of this agreement.

### **INDEMNIFICATION**

The University shall not assume any obligation to indemnify, hold harmless, or pay attorneys' fees that may arise from or in any way be associated with the performance or operation of this agreement.

**INSURANCE REQUIREMENTS** *(for all work performed on University premises, or using equipment or facilities owned, occupied or used by the University, or as otherwise required by the University). See INSURANCE ADDENDUM for details on limits.*

1. The Contractor shall secure, pay the premiums for, and keep in force until the expirations of this Contract, and any renewal thereof, appropriate insurance for the goods and services provided. The amount of such coverages shall meet or exceed the minimum coverage specified by law, regulation, industry standard, or the Procurement Officer, whichever is greater.
2. All required insurance coverages must be acquired from insurers allowed to do business in the State of Maryland and acceptable to the University. The insurers must have a policyholders' rating of "A-" or better, and a financial size of "Class VII" or better in the latest edition of Best's Insurance Reports.
3. Policies must name the University of Maryland College Park and the University System of Maryland and their Board of Regents/Trustees, officers, employees, agents and volunteers as "Additional Insureds" on general liability and other policies and this must be reflected on the certificate of insurance, along with the Contract or Purchase Order number.
- 4 Contractor must provide a certificate of insurance which clearly states the types of coverage and limits prior to performing the work.

### **INTELLECTUAL PROPERTY**

Contractor agrees to indemnify and save harmless the University, its officers, agents and employees with respect to any claim, action, costs 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.

**INVESTMENT ACTIVITIES IN IRAN.** Contractor, by accepting this order, certifies that it is not on the list of entities ineligible for award per Board of Public Works Advisory 2013-001, the full text of which is available at: <https://bpw.maryland.gov/Pages/adv-2013-1.aspx>.

Written certification shall be furnished to the Procurement Officer on demand.

### **MANDATORY REPORTING OF SUSPECTED CHILD ABUSE AND NEGLECT**

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Maryland law contains mandatory reporting requirements for all individuals who suspect child abuse or neglect. Contractors performing work on campus also must comply with USM Board of Regents (BOR) VI-1.50 – Policy on the Reporting of Suspected Child Abuse & Neglect, as well as the University Procedures for Reporting Suspected Child Abuse and Neglect. The above-referenced USM/University Policy and Procedures are available at the following link: <https://www.usmd.edu/regents/bylaws/SectionVI/> and are incorporated herein. The University reserves the right to terminate the Contract if Contractor fails to comply with the above-referenced policy or procedures, or if, in the judgment of the University, termination is necessary to protect the safety and welfare of children who come into contact with the University community.

### **MARYLAND LAW PREVAILS**

This Contract shall be construed, interpreted and enforced according to the laws of the State of Maryland, without reference to its conflicts of law principles.

### **MODIFICATIONS AND AMENDMENTS**

This Contract may be amended with the consent of both parties. Amendments may not significantly change the scope of the Contract. Changes to these terms and conditions may only be made by an authorized Procurement Officer in the Department of Procurement and Business Services.

### **MULTI-YEAR CONTRACTS CONTINGENT UPON APPROPRIATIONS**

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 University's rights or the Contractor's rights under any termination provision in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the University 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 non-recurring costs incurred but not amortized in the price of the Contract. The University 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.

### **NON-DISCRIMINATION IN EMPLOYMENT**

Contractor agrees to (a) not to discriminate in any manner against any employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, general 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

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post and cause subcontractor to pose in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

### **NON-HIRING OF OFFICIALS AND EMPLOYEES**

No official or employee of the State of Maryland, as defined under General Provisions Article §5-502 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.

### **NON-VISUAL ACCESS CLAUSE** *(See, also, UMD ACCESSIBILITY ADDENDUM)*

Contractor warrants that the information technology offered hereunder (1) provides equivalent access for effective use by both visual and nonvisual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; (3) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (4) is available, whenever possible, without modification for compatibility with software and hardware for nonvisual access. Contractor further warrants that the costs, if any, of modifying the information technology for compatibility with software and hardware used for nonvisual access will not increase the cost of the information technology by more than 5 percent. For purposes of this section, the phrase "equivalent access" means that the ability to receive, use and manipulate information and operate controls necessary to access and use information technology by nonvisual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

### **OWNERSHIP OF DOCUMENTS AND MATERIALS**

Unless explicitly provided otherwise by UMD in the Contract, the Contractor agrees that all documents and materials including, but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, designs, graphics, mechanical, artwork, and computations prepared by or for it under the terms of the Contract shall at any time during the performance of the services be made available to the University upon request by the University and shall become and remain the exclusive property of the University upon termination or completion of the services. The University shall have the right to use same without restriction or limitation and without compensation to the Contractor other than that provided by the Contract. The University shall be the owner for purposes of copyright, patent or trademark registration.

### **PARKING**

If at any time Contractor shall be on the premises of the University of Maryland, then Contractor is responsible for acquiring a valid University of Maryland parking permit, obeying all parking regulations, and paying all fines assessed for violations of parking regulations. Contractor is responsible for ensuring this clause is included in Contractor's agreements with subcontractors.

### **PAYMENT OF STATE OBLIGATIONS**

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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 University's receipt of a proper invoice from the Contractor.

The Contractor may be eligible to receive late payment interest at a rate of 9% per annum if:

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

The University is not liable for interest:

- Accruing more than one year after the 31st days after the agency receives the proper invoice; or
- 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, Annotate Code of Maryland or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable.

### **POLITICAL CONTRIBUTION DISCLOSURE**

The Contractor shall comply with Election Law Article Title 14 Annotated Code of Maryland, which requires that every person that enters into a procurement contract 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 contribution 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 (or University), 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](http://www.elections.state.md.us/campaign_finance/index.html)



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### **PUBLIC INFORMATION ACT NOTICE**

The University is subject to the Maryland Public Information Act, General Provisions Article, Title 4 of the Annotated Code of Maryland. Contractors should give specific attention to the identification of those portions of their offer, Contract, and/or related documentation that they deem to be confidential, proprietary information or trade secrets. Contractor may be required to provide justification why such materials, upon request, should not be disclosed by the University.

### **RESPONSIBILITY FOR CLAIMS AND LIABILITY**

The Contractor shall be responsible for all damage to life and property due to its activities or those of its agents or employees, in connection with the services required under the Contract. Further, it is expressly understood that the Contractor shall indemnify and save harmless the University, its officers, agents, and employees from and against all claims, suits, judgements, expenses, actions, damages and costs of every name and description, including reasonable attorney's fees and litigation expenses arising out of or resulting from the negligent performance of the services of the Contractor under the Contract.

### **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.

### **SPECIFICATIONS**

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

### **SOFTWARE CONTRACTS** (See, also, *UMD ACCESSIBILITY AND SENSITIVE DATA ADDENDA*)

As specifically provided by § 21-104, Commercial Law Article, Annotated Code of Maryland, the parties agree that this Contract shall not be governed by the Uniform Computer Information Transactions Act (UCITA), Title 22 of the Commercial Law Article of the Annotated Code of Maryland, as amended from time to time. This Contract shall be governed by the common law of Maryland relating to written agreements, as well as other statutory provisions, other than UCITA, which may apply, and shall be interpreted and enforced as if UCITA had never been adopted in Maryland.

Contractor agrees that as delivered to buyer, the software does not contain any program code, virus, worm, trap door, back door, timer or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically upon the occurrence of selected conditions, or manually on command of Contractor.

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### **SUBCONTRACTING OR ASSIGNMENT**

The benefits and obligations hereunder shall take effect and be binding upon the parties hereto and neither the Contract nor the services to be performed thereunder shall be subcontracted, or assigned or otherwise disposed of, either in whole or in part, except with the prior written consent of the University.

### **SUSPENSION OF WORK**

The procurement officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the University.

### **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 provided upon request. Where a Contractor is required to furnish and install material in the construction of improvement to real property in performance of the Contract, the Contractor shall pay the Maryland sales tax and the exemption does not apply.

If the Contractor's price includes the cost of Contractor furnishing any other material, equipment, supplies, or other items in connection with the Contract, the Contractor shall pay the Maryland sales tax.

### **TERMINATION FOR CONVENIENCE**

Upon written notice to the Contractor, the University may terminate this Contract, in whole or in part, whenever the University shall determine that such termination is in the best interest of the University. The University shall pay all reasonable costs incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor may not be reimbursed for anticipatory profits. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of USM Procurement Policies and Procedures.

### **TERMINATION FOR DEFAULT**

If Contractor fails to fulfill its obligation under this Contract properly and on time, or otherwise violates any provision of the Contract, the University 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 University's option, become the University's property. The University shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages cause by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the University can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of USM Procurement Policies and Procedures.

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### **UNIVERSITY SYSTEM OF MARYLAND POLICIES, AND PROCEDURES**

The USM Procurement Policies and Procedures in effect on the date of execution of this Contract are applicable to this Contract.

### **USE OF UNIVERSITY NAME AND LOGO**

Contractor shall not use the names, logos, images, or trademarks of the University, or those of any of its employees or students, including any adaptation of the foregoing, without prior written consent of the University or the individuals in each case.

### **END OF TERMS AND CONDITIONS**