



# STATE OF MICHIGAN PROCUREMENT STANDARD CONTRACT TERMS (SHORT FORM)

**[Read and Delete: Solicitation Manager must contact DTMB Enterprise Risk Management at [DTMB-RiskManagement@michigan.gov](mailto:DTMB-RiskManagement@michigan.gov) to obtain insurance terms if this is a service-based contract.]**

Vendor is deemed to have accepted these terms upon the earliest of vendor's: written acceptance of these terms; commencement of work; receipt of payment; or submission of a bid, proposal, or other offer in response to a solicitation.

- 1. General.** Vendor's failure to deliver or comply with any of these terms, may result in damages against the Vendor and the termination of the Contract.
- 2. Delivery, Title and Risk of Loss.** Vendor must pay all costs associated with packaging, freight, and shipping, and must ship all deliverables F.O.B. destination, inside delivery, unless otherwise specified in the Contract. Title and risk of loss or damage to deliverables remains with Vendor until the deliverables have been received, inspected and accepted by the State in accordance with these terms. All containers and packaging become the State's exclusive property upon final acceptance. Vendor shall ensure that all deliverables and services ("Deliverables") are provided to the State by the date and time specified on the Contract. If Vendor fails to provide the Deliverables in accordance with the Contract, the State may reject the delivery and terminate the Contract without any termination charges or penalties, and Vendor must pay all associated costs, including, but not limited to, expedited routing costs, return shipping charges, the procurement of the Deliverables from another source, and any storage removal, or disposal expenses. The risk of loss of rejected or non-conforming Deliverables remains with Vendor. Rejected Deliverables not removed by Vendor within 10 calendar days will be deemed abandoned by Vendor, and the State will have the right to dispose of such Deliverables as its own property. Vendor is responsible for filing, processing, and collecting all damage claims.
- 3. Inspection.** The State may inspect the work and activities of Vendor, and its subcontractors, at all reasonable times and places before, during and after delivery of the Deliverables. All Deliverables are subject to final inspection and acceptance by the State notwithstanding any prior payments or inspections. Final inspection will take place within 30 calendar days of the later of the delivery date, installation, or completion of services. If any Deliverables are non-conforming or defective, the State is entitled to, at its option and at Vendor's expense: (a) a refund; (b) a credit; or (c) correction or replacement. If Vendor fails to correct defects or replace non-conforming Deliverables within 10 calendar days, the State may, in addition to its other remedies: (i) reject such Deliverables; (ii) accept such Deliverables at a discount; or (iii) make such corrections or replace such Deliverables and charge Vendor any resulting costs incurred by the State plus an additional 10% administrative fee.
- 4. Payment.** Invoices must include an itemized statement of all charges. All undisputed amounts are payable within 45 calendar days of the later of the State's: (a) receipt of an invoice; or (b) final acceptance of the Deliverables. The State is exempt from federal excise tax, state, and local sales taxes, and use taxes if the Contract Activities purchased under this Contract are for the State's exclusive use. Contractor will not include the collection of taxes for which the State is exempt in any invoices or payments related to this Contract. The State is not responsible for taxes imposed or assessed on Contractor. The State may withhold payment in whole or in part

for Deliverables the State determines are defective, untimely, or otherwise non-conforming to the Contract. All amounts due and payable by the State to Vendor shall be subject to deduction or setoff by the State against any claim the State may have against Vendor whether arising out of the Contract or any other transactions with the State. The State will only disburse payments through Electronic Funds Transfer (EFT). If Vendor does not register to receive payments at <http://www.michigan.gov/SIGMAVSS>, the State is not liable for failure to provide payment.

- 5. Warranties and Representations.** Vendor represents and warrants: (a) all Deliverables furnished under the Contract will conform to all specifications and industry standards, and will be free from defects, including, where applicable and without limitation, defects in material, workmanship, and title; (b) Vendor is the owner or licensee of all Deliverables it licenses, sells, or develops and Vendor has the rights necessary to convey title, ownership rights, or licensed use; (c) all Deliverables are provided free from any security interest, lien, or encumbrance and will continue in that respect; (d) the Deliverables will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (e) Vendor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Deliverables; (f) Vendor will not negate, exclude, limit, or modify in any warranty otherwise available to the State in any way; (g) the Deliverables are merchantable and fit for the State's intended use; (h) the Deliverables furnished will conform in all respects to samples, advertisements, and other forms of representation made to the State; (i) the Contract signatory has the authority to enter into the Contract; (j) all information furnished and representations made in connection with the Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading, and the (k) Vendor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. Vendor agrees to promptly replace or correct any Deliverables not conforming to the foregoing warranty, without expense to the State, when notified of such non-conformity by the State. A breach of this Section is a material breach of the Contract.
- 6. Termination for Cause.** The State may terminate the Contract, in whole or in part, at any time for cause in the event Vendor fails to comply with any of these terms, including, without limitation, late delivery or performance, the delivery of defective or non-conforming Deliverables, or failure to provide the State with reasonable assurances of future performance. In the event of termination for cause, the State will not be liable to Vendor for any amount, and Vendor will be liable to the State for any and all damages, including but not limited to, administrative fees, court costs, attorney fees, and cover costs. Any ineffectual termination for cause is hereby deemed a termination for convenience, effective as of the same date and limited to those rights.
- 7. Termination for Convenience.** The State may immediately terminate the Contract, in whole or in part, without penalty and for any reason or no reason, including but not limited to, appropriation or budget shortfalls. Upon termination for convenience, the State will only pay for those Deliverables, not including standard stock, then in progress and which cannot be returned under these terms.
- 8. Indemnification.** Vendor must defend, indemnify and hold the State, all of its instrumentalities, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Vendor (or any of Vendor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or other requirements contained in the Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury,

death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Vendor (or any of Vendor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Vendor (or any of Vendor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable). Due to constitutional prohibitions, the State will not indemnify Vendor, or its employees or affiliates, for any reason whatsoever.

- 9. Confidentiality.** Vendor agrees that any information, including State Data, disclosed by the State in relation to the Contract will be used only in the performance thereof. Vendor will keep the information confidential, will not disclose it to any third party, except as authorized by the State, and will only disclose it to those within its organization who need it for performance of the Contract. Upon completion or termination of the Contract, Vendor will return all such information to the State, or make such other disposition thereof as directed or approved by the State. No item furnished under the Contract, or tools, plans, designs, or specifications for producing the same, which have been specifically designed for or by the State, will be duplicated or used by Vendor. Nothing in this provision will restrict Vendor's right to use or disclose any information which is or becomes known to the public without breach of this provision by Vendor or is rightfully obtained without restriction from other sources.
- 10. Proprietary Rights.** All materials, tools, plans, designs, specifications, equipment, and other property either furnished by the State to Vendor or paid for by the State, will remain the property of the State, but the Vendor assumes the risks of, and will be responsible for, any loss or damage, until returned in good order to the State. Such property must be safely stored and properly maintained by Vendor. Upon completion of this Contract, Vendor will return such property to the State or to any other entity as the State may direct, in the condition in which it was received, manufactured or procured by Vendor, except for reasonable wear and tear and except if such property has been incorporated into the Deliverables.
- 11. State Data.** All data and information provided to Vendor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("State Data") and may only be used as specifically required by the Contract; this definition is to be construed as broadly as possible. Upon request, Vendor must provide to the State, or its third-party designee, all State Data within 10 calendar days of the request and in the format requested by the State. Vendor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.
- 12. Intellectual Property.** Unless otherwise stated in the Contract, Vendor: (a) agrees that any computer program, software, documentation, copyrightable work, discoveries, inventions or improvements developed by Vendor resulting from supplying the Deliverables are the property of the State; and (b) hereby assigns all rights therein to the State. Vendor further agrees to provide the State with any assistance which the State may require to obtain patents or copyright registrations.
- 13. Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action. Under no circumstances will the State be liable for any amounts, in whatever form, in excess of the total aggregate value set forth in the Contract.
- 14. Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Vendor to verify compliance with the Contract. Vendor must retain and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under the Contract or any extension.

- 15. Notices.** All notices and other communications required or permitted under the Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.
- 16. Modifications.** The Contract may not be amended except by signed agreement between the parties (a “**Change Notice**”).
- 17. Independent Contractor.** Vendor is an independent contractor and assumes all rights, obligations and liabilities set forth in the Contract. Vendor, its employees, and agents are not considered employees of the State.
- 18. Subcontracting and Assignment.** Vendor may not delegate or assign any of its obligations or rights under the Contract without the prior written approval of the State.
- 19. Compliance with Laws and Policies.** Vendor must comply with all applicable federal, state and local laws, rules and regulations. Vendor must also comply with all applicable State physical and IT security policies and standards, which will be made available upon request.
- 20. Prevailing Wage Act Statutory Provision.** Contractor must comply with prevailing wage requirements, to the extent applicable to this Contract. As required by MCL 408.1112, if the Michigan Prevailing Wage Act, MCL 408.1101 et seq. applies to this Contract, construction mechanics (as defined in MCL 408.1101 (b)) are intended beneficiaries of the contractual prevailing wage, fringe benefit, and nondiscrimination nonretaliation requirements of the Contract. Any construction mechanic aggrieved by the failure of a Contractor or subcontractor to pay prevailing wages or benefits as specified in this Contract, or by a violation of MCL 408.1107, in addition to any other remedies provided in Public Act 10 of 2023 or by law, may bring an action in a court of competent jurisdiction against the Contractor or subcontractor for damages or injunctive relief and may be awarded reinstatement or other appropriate relief, and all damages sustained, together with actual costs and attorney fees at trial and on appeal. If the Michigan Prevailing Wage Act, MCL 408.1101 et seq. applies to this Contract, the rates of wages and fringe benefits to be paid to each class of construction mechanic (as defined in MCL 408.1101 (b)) by Contractor and subcontractors must not be less than the wage and fringe benefit rates prevailing in the locality in which the work is performed.
- 21. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and Executive Directive 2019-09, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person’s ability to perform the duties of a particular job or position. Breach of this Section is a material breach of this Contract.
- 22. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor, Vendor, or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 23. Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles. Contractor waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint an agent in Michigan to receive service of process.

- 24. Non-Exclusivity.** Nothing contained in the Contract is intended nor will be construed as creating any requirements contract with Vendor. The Contract does not restrict the State or its agencies from acquiring similar, equal, or like Deliverables from other sources.
- 25. Force Majeure.** Neither party will be in breach of the Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Vendor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
- 26. Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State. Vendor will provide the State, for its review, copies of all presentations or articles being submitted for publication at least 30 calendar days in advance.
- 27. Website Incorporation.** The State is not bound by any content on Vendor's website unless expressly incorporated directly into the Contract.
- 28. Severability.** If any part of the Contract, or these terms, is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract terms will continue in full force and effect.
- 29. Waiver.** Failure to enforce any provision of the Contract, or these terms, for any period of time will not constitute a waiver.
- 30. Survival.** The provisions of these terms that impose continuing obligations, including warranties and representations, termination, indemnification, intellectual property, and confidentiality, will survive the expiration or termination of the Contract.
- 31. Entire Contract.** The Contract and these terms constitute the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. No terms on any invoice, quote, purchase order, website, browse-wrap, shrink-wrap, click-wrap or other non-negotiated terms and conditions provided with any of the Deliverables (including software and hardware) or documentation, whether by Vendor, Contractor, subcontractor, or any third-party, will constitute a part or amendment of the Contract or is binding on the State or any authorized user for any purpose.