

## Anne Arundel Community College Terms and Conditions

**1. CONTRACT TERMS:** The performance of this contract shall be governed solely by the terms and conditions as set forth in this purchase order, notwithstanding any language contained on any invoice, shipping order, bill of lading or other document furnished by the Seller at any time. The acceptance by the College of any goods or services furnished hereunder shall not be construed as acceptance by the College of any terms or conditions which are inconsistent with the terms and conditions here stated. All terms and conditions in any College solicitation, and any amendments thereto, are made part of this contract. Any different or additional terms other than those herein contained in Seller's acceptance are hereby objected to.

**2. COMPLETE AGREEMENT:** The purchase order hereto and these terms and conditions, together with any other documents incorporated herein by reference, constitute the sole and entire agreement between the College and Seller with respect to the subject matter hereof, superseding completely any oral or written communications unless the terms thereof are expressly incorporated herein. Where Seller's quotation is referred to herein, such quotation is incorporated in this document only to the extent of specifying the nature or description of the goods ordered and only to the extent such items are consistent with the other terms herein.

**3. ELECTRONIC/FACSIMILE TRANSMISSION:** If the purchase order is transmitted by electronic means of transmission, such transmission shall have the legal significance of a duly executed original delivered to the Seller.

**4. ASSIGNMENT AND SUCCESSORS:** The Seller shall not assign rights or delegate duties under this purchase order, or subcontract any part of the performance required under this purchase order, without the express, written consent of the College. This purchase order shall ensure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Assignment of accounts receivable may be made only upon written notice furnished to the College.

**5. INDEPENDENT CONTRACTOR:** The Seller agrees and understands that the work/services performed under this Agreement are performed as an Independent Contractor and not as an employee of the College and that the Seller acquires none of the rights, privileges, powers or advantages of College employees. The Seller is required to pay Federal and State taxes, and will receive a 1099 Misc. from the College. The College shall not be responsible for withholding taxes with respect to the Seller's compensation hereunder. The Seller shall have no claim against the College hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

**6. DELIVERY AND PACKING:** All prices quoted must include delivery. All goods delivered under this contract shall be packed in accordance with accepted trade practices. No charges may be made over and above a bid price for packaging, or for deposits or containers unless specified in the quote or RFP/B. No charge will be allowed for cartage unless by prior written agreement. Delivery shall be made in accordance with instructions on the Anne Arundel Community College Purchase Order. A packing slip shall be included in each shipment. All deliveries must be prepaid and must be delivered to Central Receiving or as designated on purchase order at no additional cost. DELIVERIES MUST BE MADE TO THE SPECIFIED LOCATION. NO COLLECT SHIPMENTS OR SIDEWALK DELIVERIES WILL BE ACCEPTED. All deliveries shall be FOB Destination (Anne Arundel Community College) unless otherwise specified in the college's Purchase Order Agreement.

**7. INSPECTION AND ACCEPTANCE:** No goods received by the College pursuant to the purchase order shall be deemed accepted until the College has had reasonable opportunity to inspect said goods for hidden damage or failure to meet specifications. Damaged/unacceptable goods shall be rejected and will be returned at Seller's expense for full credit or replacement, at the College's sole option. The College reserves the right to test any goods, or services delivered to determine that specifications have been met. No goods returned as defective shall be replaced without College authorization. If Seller fails to cure defect within ten (10) calendar days, the College reserves the right to make same purchase on the open market and Seller shall be liable for any excess price paid for the replacement, plus applicable expenses, if any.

**8. WARRANTY:** Seller expressly warrants that all articles, material and work offered shall conform to each and every specification, drawing, sample or other description which is furnished to or adopted by the College and that they will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defect. Such warranty shall survive a contract and shall not be deemed waived either by the College's acceptance of said materials or goods, in whole or in part, or by payment for them, in whole or in part. The Seller further warrants all articles, material and work performed for a period of one (1) year, unless otherwise stated, from date of acceptance of the items delivered and installed. All repairs, replacements or adjustments during the warranty period shall be at Seller's expense.

**9. INTELLECTUAL PROPERTY:** Seller guarantees that the sale and/or use of the goods offered will not infringe upon any U.S. or foreign patent. Seller will at his/her own expense, indemnify, protect and save harmless the College, its trustees, employees, agents and students with respect to any claim, action, cost or judgment for patent infringement, arising out of the purchase or use of these goods.

**10. QUANTITIES:** The College assumes no obligation for articles or materials shipped in excess of the quantity ordered. Any over-shipments will be subjected to rejection and will be returned at Seller's expense.

**11. TIME IS OF THE ESSENCE:** Time is of the essence in the performance of this contract.

**12. INVOICES:** A separate invoice for each purchase order or for each shipment thereon shall be forwarded directly to *Anne Arundel Community College*,

*Disbursements- RESM, 101 College Parkway, Arnold, MD 21012.* THE PURCHASE ORDER NUMBER MUST BE DISPLAYED by Seller on all related invoices, delivery memoranda, bills of lading, packages and/or correspondence. Failure to comply may result in refusal of shipment and/or delay in payment. The College has no liability for invoices not prepared in accordance with these requirements.

**13. PAYMENT:** The College will exclusively pay the Seller for all amounts due within 30 days after receipt of products or services, and upon receipt of a correct invoice.

**14. INSOLVENCY:** If the College has reasonable cause to believe the Seller is insolvent, or if any petition in bankruptcy or under any law for the relief of debtors is filed by or in respect of Seller, then at the option of the College, the contract shall immediately terminate. In no event shall the contract become an asset in any such proceeding nor shall the College be bound hereby after any act of bankruptcy by Seller. Any delay by the College in the exercise of the right to terminate under this section shall not diminish or waive that right.

**15. TAXES:** The College is generally exempt from Federal and Maryland State taxes. An Exemption Certificate is available upon request. Seller shall be responsible for the payment of any and all applicable taxes resulting from any award and/or activities hereunder, including but not limited to any applicable amusement and/or sales taxes.

**16. NON-HIRING OF EMPLOYEES:** No employees of the College or of the State or any department, commission, agency or branch thereof whose duties as such employee include matters relating to or attending the subject matter of this contract shall, during the term of this contract and while being employed, become or be an employee of Seller.

**17. AFFIRMATIVE ACTION NOTICE:** Seller is notified that he/she may be subject to the provisions of 41 CFR Section 60-300.5(a); 41 CFR Section 60-741.5(a); 41 CFR Section 60-1.4(a) and (c); 41 CFR Section 60-1.7(a); 48 CFR Section 52.222-54(e); and 29 CFR Part 471, Appendix A to Subpart A with respect to affirmative action program and posting requirements. **All contractors and subcontractors shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities, and 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**

**18. ASSURANCE OF NON-CONVICTION OF BRIBERY:** Seller hereby declares and affirms that, to its best knowledge, none of its officers, directors or partners and none of its employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery or conspiracy to bribe under the laws of any state or the Federal Government.

**19. TERMINATION FOR CONVENIENCE:** The College may terminate this contract, in whole or part, without cause, by providing written notice thereof to the Seller at least (30) days prior to the intended date of termination. In the event of termination, without cause, the College shall advise the Seller in writing of the termination date and of work to be performed during the final days prior to contract termination. The Seller shall be paid for all reasonable costs incurred by the Seller up to the date of termination set forth in the written notice of termination. Payment shall be made in accordance with the provisions of paragraphs 12 and 13 of these Terms and Conditions.

**20. TERMINATION FOR DEFAULT:** When the Seller has not performed or has unsatisfactorily performed the contract, payment shall be withheld at the discretion of the College. Failure on the part of the Seller to fulfill contractual obligations shall be considered just cause for termination of the contract and the Seller is not entitled to recover any costs incurred by the Seller after the date of the termination notice.

**21. TERMINATION BASED ON LACK OF FUNDING:** Anne Arundel Community College is a public institution of higher education and its budget is subject to funding by governmental entities. This contract is subject to the continued appropriation of sufficient funds for this contract by the College's appropriating authority. For purpose of this contract, the College's appropriating authority is deemed to be the Board of Trustees of Anne Arundel Community College. Lack of funding shall be grounds for immediate termination of the contract. The College shall promptly provide the seller written notice if a non-appropriation occurs.

**22. ARBITRATION:** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Arbitration Rules including the Optional Rules for Emergency Measures of Protection, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. If they do not reach such solution within 60 days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules.

**23. NON-COLLUSION:** Seller certifies that it has neither agreed, conspired, connived or colluded to produce a deceptive show of competition in the compilation of the bid or offer being submitted herewith; Seller also certifies that it has not in any manner, directly or indirectly, entered into any agreement, participated in any

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collusion to fix the bid price or price proposal of the Seller or offeror herein or any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with contract for which the within bid or offer is submitted.

**24. CONTINGENT FEES:** Seller hereby declares and affirms that neither it nor any of its representatives have employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Seller, to solicit or secure a contract, 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 contract.

**25. MARYLAND PUBLIC INFORMATION ACT:** Seller recognizes that the College is subject to the Maryland Public Information Act, Title 10 of the State Government Article of the Annotated Code of Maryland. Seller agrees that it will provide any justification as to why any material, in whole or in part, is deemed to be confidential, proprietary information or trade secrets and provide any justification of why such materials should not be disclosed pursuant to the Maryland Public Information Act.

**26. FINANCIAL DISCLOSURE:** The Seller 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 or a state unit and receives in the aggregate \$100,000 or more during a calendar year shall, within 30 days of the time when the \$100,000 is reached, file with the Secretary of State certain specified information to include disclosure of beneficial ownership of the business.

**27. POLITICAL CONTRIBUTION DISCLOSURE:** The Seller shall comply with Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland or a political subdivision of the State, including its agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Administration Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

**28. 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, 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.

**29. RECORDS RETENTION:** If awarded a contract, Seller shall maintain books and records relating to the subject matter of this contract, including but not limited to all charges to the College, for a period of three (3) years from the date of final payment under this Agreement.

**30. AUDIT:** Seller shall permit audit and fiscal and programmatic monitoring of the work performed under any contract issued. The College shall have access to and the right to examine and/or audit any records, books, documents and papers of Seller and any subcontractor involving transactions related to this contract during the term of this contract and for a period of three (3) years after final payment under this contract.

**31. HAZARDOUS AND TOXIC SUBSTANCES:** Seller must comply with all applicable Federal, State, and County laws, ordinances and regulations relating to hazardous and toxic substances, including such laws, ordinances and regulations pertaining to access to information about hazardous and toxic substances, and as amended from time to time. Seller shall provide the College with a "Safety Data Sheet" including reference to the Purchase Order number, or in the case of a controlled hazardous waste substance, a hazardous waste manifest for all hazardous chemicals listed or subsequently added to the Chemical Information List in compliance with applicable laws, ordinances and regulations.

**32. INSURANCE:** The seller shall obtain, and maintain at all times during the term of this contract, insurance as required in the respective solicitation. If insurance requirements are not specified in the solicitation, the seller represents that at the time of acceptance of this order, the seller maintains comprehensive general liability insurance in an amount not less than \$1,000,000, combined single limit; worker's compensation insurance as required by law; and automobile liability insurance for all vehicles to be used by seller in the performance of services under this order. A Waiver of Subrogation in favor of Anne Arundel Community College is required for Workers' Compensation and General Liability. Upon request, vendor shall provide a Certificate of Insurance stating such coverage.

**33. INDEMNIFICATION:** The Seller must name Anne Arundel Community College as an additional insured on all liability insurance policies, as well as clearly state that it will hold harmless and defend Anne Arundel Community College, its Board of Trustees, faculty, staff, agents and employees, from any and all claims, actions, or judgments including the expenditure of attorney's fees and costs arising out of or incident to the performance of the contract, on the Certificate of Insurance.

**34. COMPLIANCE WITH LAWS:** Seller agrees to comply, at no additional expense, with all applicable Executive Orders, Federal, State, regional and local laws, ordinances, rules and regulations in effect as of the date of this contract and as they may be amended from time to time.

**35. MARYLAND LAW:** This contract shall be construed and interpreted according to Maryland Law. The parties commit to the jurisdiction and venue of the courts located in Anne Arundel County, Maryland, to adjudicate any dispute arising under or relating to this purchase order.

**36. SEVERABILITY:** If any term or condition of this contract is held invalid by any court, such invalidity shall not affect the validity of other terms and conditions of this contract.

**37. CHANGES:** The College may at any time, by written order, make changes within the general scope of the contract to the work and service to be performed. If any such changes cause an increase or decrease in Seller's cost of, or the time required for performance of this contract, an equitable adjustment shall be made, and the contract shall be modified in writing accordingly.

**38. NON-DISCRIMINATION:** The Seller agrees (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, gender or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to inform and instruct its employees that all forms of sex discrimination, sexual harassment and sexual misconduct are expressly prohibited, that employees who have been or are being subjected to sex discrimination, sexual harassment or sexual misconduct or who are aware of another who has been or is being subjected to such actions shall immediately notify Seller's management, that retaliation for reporting any such conduct is expressly prohibited and that Seller will take timely and appropriate action against any of its employees who commit such prohibited acts; (c) to include provisions similar to those contained in subsections (a) and (b) above in any underlying subcontract. **Failure to comply with the terms of this section shall be considered just cause for termination of this contract by the college pursuant to Section 20.**

**39. CSI:** All service providers that work in the proximity of Confidential and Sensitive Information (CSI) must agree to abide by the College's Identity Theft Prevention policies and procedures. In the event that the service provider becomes aware of a red flag or data incident, the service provider is required to report the incident to their point of contact at the College. The point of contact is required to notify the Chair of the Red Flags Committee and report the incident, provide the Chair with the contact information of the service provider, and assist the Chair as necessary in incident reporting and resolution. All service providers that process, store or transport CSI provided by the college are required to give the College sufficient documentation to assess the provider's data security risk.

**40. BACKGROUND INVESTIGATIONS FOR VENDORS:** As a condition of award of this contract, all vendors, contractors, and subcontractors who will be working (this includes attending meetings) on any College campus may be required to provide proof of a successful background check upon award of the Contract. This includes, but is not limited to, verification of credentials, criminal history, and driving records (as appropriate). The College reserves the right to request documentation from the successful vendor, contractor and subcontractor for proof of their ability to work in the United States.

**41. CONFLICT OF INTEREST:** As a condition of award of this contract, the vendor represents and warrants that no employee, officer or agent of the college has or would have a conflict of interest associated with the selection, award, or administration of this or any contract between the college and the vendor. Such a conflict of interest would arise if an employee, officer or agent, or any member of his or her immediate family, his or her partner, or any entity, organization, or individual which employs or intends to employ any of the aforementioned individuals indicated herein, has a financial or other interest in or has or will receive a personal benefit from the vendor herein."

**42. FORCE MAJEURE:** Neither party shall be responsible for delays or failure to perform resulting from causes beyond the reasonable control of such party, including without limitation, fire, explosion, flood, earthquake, storm, war, strike, or riot, terrorist attacks, civil commotion, discontinuity in the supply of power, court order or governmental interference, or by any other cause of like or unlike nature and without fault or negligence of such party.

### Melanie Scherer

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