

**CONTRACT MODIFICATION**  
State of Maryland  
Department of Budget and Management

Modification No.: #3

To Contract No.: DBM - BPO: 050B9800008

Date of Modification: 4-1-10

Contract Dated: March 16, 2009

Between the State of Maryland, Department of Budget and Management ("Department") and Monster Worldwide, Inc. ("Contractor") to provide Statewide On-Line Employment Posting Services with Monster.com. The following Contract terms and conditions are modified as follows:

1. The term of the Contract is hereby extended and will terminate on September 30, 2010, unless terminated earlier as provided in the Contract.
2. The not to exceed amount is increased by \$15,000, making the total Contract value \$40,000.
3. Appendix A, attached hereto and incorporated by reference herein, is added to the Contract to include all standard contract language required for contracts valued at over \$25,000. To the extent there is any conflict between Appendix A and the original Contract, the provisions of Appendix A shall govern.
4. Except as expressly modified herein and by Modification 1 and Modification 2, all of the provisions of the original Contract remain in full force and effect and are hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties have caused this Contract Modification No. 3 to be executed by their duly authorized officers, agents or officials as of the above-referenced date.

Monster Worldwide, Inc. ("Contractor")

Witness/Attest:

By:

Corporate Officer/Authorized Agent

Printed Name/Title of Officer/Agent

STATE OF MARYLAND

By: Department of Budget and Management

Witness

By:

T. Eloise Foster  
Secretary, Department of Budget and Management

Approved as to form and legal sufficiency

this 8<sup>th</sup> day of April, 2010.

Assistant Attorney General

**ON-LINE EMPLOYMENT POSTING SERVICES WITH MONSTER.COM**  
**DBM – BPO: 050B980008**

**APPENDIX A**

**1. Services to be Provided** *(This replaces Section 1 in the original contract.)*

**1.1** The Contractor shall provide on-line job posting services as follows (collectively, the “Services”):

- a. Establish the State as a viable and successful employer;
- b. Provide a competitive rate for on-line job postings that reach the largest audience feasible to entice new job candidates to work for the State;
- c. Provide applicant screening to limit the number of candidates to be reviewed by the State staff to the most qualified for the specific job position being advertised; and
- d. Bill each State agency separately at the group posting rate, for its respective portion of the recruitment branding as each agency places postings, in accordance with the scope of work attached as Exhibit A to the Contract between the Department of Budget and Management and Monster Worldwide, Inc. dated March 16, 2009 (the “Contract”) and incorporated therein.

**1.2** The Services shall be provided in accordance with the terms and conditions of the Contract and the following Exhibits, which are incorporated herein by reference. If there is any conflict between the Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP

Exhibit B – The Technical Proposal

Exhibit C – The Financial Proposal

Exhibit D – State Contract Affidavit, executed by the Contractor and dated March 17, 2009

Exhibit E – Amendment to Contract (Solicitation #SCC070006-A2) by and between the State of Arizona (sic) and Monster Worldwide, Inc. dated March 16, 2009

**1.3** The Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the Contract or the RFP. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

**2. Compensation and Method of Payment** *(This replaces Section 3 in the original contract.)*

- 2.1 In consideration of the satisfactory performance of the work set forth in this Contract, the individual Agencies receiving Services shall pay the Contractor in accordance with the terms of this Contract and at the rates specified on Exhibit C, Contractor's Financial Proposal. Except with the express written consent of the Procurement Officer, all payments by the individual Agencies to the Contractor pursuant to this Contract shall not exceed \$40,000. Contractor shall notify the Contract Manager, in writing, at least 60 days before payments reach the specified amount. After notification by the Contractor, if the State fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount.
- 2.2 The Contractor shall separately invoice each requesting State Agency for receipt of payment. Payments to the Contractor shall be made no later than thirty (30) days after the requesting State Agency's receipt of a proper invoice for services provided by the Contractor, acceptance by the requesting State Agency of services provided by the Contractor, and pursuant to the conditions outlined in this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification Number which is [REDACTED]. 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, are prohibited. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.
- 2.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer pursuant to this Contract.
- 2.4 Contractor's eMarylandMarketplace vendor ID number is [REDACTED]

**3. Non-Hiring of Officials and Employees**

No official or employee of the State of Maryland, as defined under State Government Article, Section 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 and 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.

**4. Disputes** *(This replaces Section 5 in the original contract.)*

This Contract shall be subject to the provisions of the State Finance and Procurement Article, Title 15, Subtitle 2, 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. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract,

the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

**5. Maryland Law Prevails** *(This replaces Section 10 in the original contract.)*

This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland. The Maryland Uniform Computer Information Transactions Act, Maryland Code Annotated, Commercial Law Article, Title 22, does not apply to this Contract, or to any purchase order, or Notice to Proceed, issued under this Contract. Any and all references to the Annotated Code of Maryland contained in this Contract shall be construed to refer to such Code sections as from time to time amended.

**6. Nondiscrimination in Employment** *(This replaces Section 9 in the original contract.)*

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

**7. Contingent Fee Prohibition**

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

**8. Nonavailability of Funding** *(This replaces Section 8 in the original contract.)*

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 rights 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.

**9. Termination for Default** *(This replaces Section 7 in the original contract.)*

If the Contractor fails to fulfill its obligations under this Contract properly and on-time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

**10. Termination for Convenience** *(This replaces Section 6 in the original contract.)*

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

**11. Delays and Extensions of Time**

The Contractor agrees to perform the work under this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor 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.

**12. Suspension of Work**

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

**13. Pre-Existing Regulations**

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, 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 Modification are applicable to this Contract.

**14. Financial Disclosure:**

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreement with the State or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

**15. Political Contribution Disclosure**

The Contractor shall comply with the Election Law Article, Sections 14-101 through 14-108, of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county or an incorporated municipality or their agencies, during a calendar year under which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections 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. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

**16. Retention of Records**

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three years after final payment by the State under this Contract 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 the Procurement Officer's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. In the event of any audit, Contractor shall provide assistance to the State, without additional compensation, to identify, investigate and reconcile any audit discrepancies and/or variances.

**17. Compliance with Laws**

The Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State 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, 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.

#### **18. Subcontracting; Assignment**

The Contractor may not subcontract any portion of the Services provided under this Contract without obtaining the prior written approval of the State, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the State. Any such subcontract or assignment shall include the terms of sections 3, and 5 through 17 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

#### **19. Indemnification**

**19.1** The Contractor shall hold harmless and indemnify the State from and against any and all liability for any costs, expenses, loss, suits, actions, or claims of any character arising from or relating to the performance of the Contractor or its subcontractors under this Contract.

**19.2** 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 obligations under this Contract.

**19.3** 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 obligations under this Contract.

**19.4** 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.

**19.5** This Section 19 survives the termination of this Contract for any liability arising within the period of the statute of limitations associated with such liability.

#### **20. Commercial Non-Discrimination**

**20.1** As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such

compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of 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 Contract and may result in termination of this Contract, 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.

**20.2** The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by DBM, in all subcontracts.

**20.3** As a condition of entering into this Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, 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 Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

## **21. Patents, Copyrights, Intellectual Property**

**21.1** If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

**21.2** The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a court finally awards, provided the State (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 21.3 below.

**21.3.** If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: a) procure for the State the right to continue using the applicable item, b) replace the product with a non-infringing product substantially complying with the item's specifications, or c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

## **22. Confidentiality**

Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party, (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information or (e) which such party is required to disclose by law.

## **23. Prompt Pay Requirements**

**23.1** If the Contractor withholds payment of an undisputed amount to its subcontractor, the State, at its option and in its sole discretion, may take one or more of the following actions:

- a. Not process further payments to the Contractor until payment to the subcontractor is verified;
- b. Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
- c. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
- d. Place a payment for an undisputed amount in an interest-bearing escrow account; or
- e. Take other or further actions as appropriate to resolve the withheld payment.

**23.2** An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute, including any retainage withheld, and includes an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

**23.3** An act, failure to act, or decision of a procurement officer or a representative of the Department or the State, concerning a withheld payment between the Contractor and subcontractor under this Contract, may not:

- A. Affect the rights of the contracting parties under any other provision of law;
- B. Be used as evidence on the merits of a dispute between the State and the Contractor in any other proceeding; or

C. Result in liability against or prejudice the rights of the State.

**23.4** The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.

**23.5** To ensure compliance with certified MBE subcontract participation goals, the State may, consistent with COMAR 21.11.03.13, take the following measures:

- A. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
- B. This verification may include, as appropriate:
  - (1) Inspecting any relevant records of the Contractor;
  - (2) Inspecting the jobsite; and
  - (3) Interviewing subcontractors and workers.
  - (4) Verification shall include a review of:
    - (a) The Contractor's monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and
    - (b) The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.
- C. If the State determines that the Contractor is in noncompliance with certified MBE participation goals, then the State will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action.
  - (1) Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
- D. If the State determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the State requires, then the State may:
  - (1) Terminate the Contract;
  - (2) Refer the matter to the Office of the Attorney General for appropriate action;  
or
  - (3) Initiate any other specific remedy identified by the Contract, including the contractual remedies regarding the payment of undisputed amounts.
- E. Upon completion of the contract, but before final payment or release of retainage or both, the contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

**24. Administrative**

**24.1 Procurement Officer.** The work to be accomplished under this Contract shall be performed under the direction of the Procurement Officer. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

**24.2 Notices.** All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:

If to the State:

Jamie Tomaszewski, Procurement Officer  
State of Maryland  
Department of Budget of Management  
Division of Procurement Policy & Administration  
45 Calvert Street, Room 134  
Annapolis, MD 21401  
410-260-7386  
[jtomasze@dbm.state.md.us](mailto:jtomasze@dbm.state.md.us)

If to the Contractor:

Andrew Ashley, Internet Recruitment Consultant  
Monster.com  
500 East 96<sup>th</sup> Street, Suite 200  
Indianapolis, IN 46240  
800-MONSTER x5324 or 317-616-5324  
[andrew.ashley@monster.com](mailto:andrew.ashley@monster.com)

**ACKNOWLEDGEMENT AND AGREEMENT to incorporate Appendix A as part of Modification #3 (executed concurrently herewith) to DBM Contract for Statewide On-Line Employment Posting Services with Monster.com dated March 16, 2009, BPO No: 050B9800008:**

Monster Worldwide, Inc. ("Contractor")

[Redacted Signature]

Witness/Attest

By:

[Redacted Signature] (SEAL)  
Corporate Officer/Authorized Agent

[Redacted Name/Title]  
Printed Name/Title of Officer/Agent