

ATTACHMENT E
PUR 1000
GENERAL CONTRACT CONDITIONS

The PUR 1000 General Contract Conditions are incorporated by reference in section 5.3, Terms, of the Enterprise Standard Terms and Conditions. These General Contract Conditions will apply to all purchases made by a Customer off the Term Contract.

General Contract Conditions

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1. Definitions. Capitalized terms used herein are defined as follows:

(a) "Attachments" means the attachments, addenda, schedules, exhibits, and other documents, however so titled, attached hereto or incorporated by reference herein.

(b) "Business Days" means Monday through Friday, inclusive, excluding State holidays specified in section 110.117, Florida Statutes ("F.S").

(c) "Contract" means the legally enforceable agreement between the Customer and Contractor to which this PUR 1000 form is attached, including all Attachments thereto. This term encompasses both written agreements and purchase orders, as each is defined in Rule 60A-1.001, Florida Administrative Code ("F.A.C.").

(d) "Contractor" means the person or entity that is a party to the Contract and is providing Products to the Customer.

(e) "Customer" means the agency, as defined in section 287.012, F.S., that is a party to the Contract. For purchases off a term contract, as defined in section 287.012, F.S., this term also includes the eligible user, as defined in Rule 60A-1.001, F.A.C, that is a party to the Contract.

(f) "Product" means any deliverable under the Contract, which may include commodities and contractual services, as each is defined in section 287.012, F.S. "Product" does not include, and no State funding under the Contract is being provided for, promoting, advocating for, or providing training or education on "Diversity, Equity, and Inclusion" ("DEI"). DEI is any program, activity, or policy that classifies individuals on the basis of race, color, sex, national origin, gender identity, or sexual orientation and promotes differential or preferential treatment of individuals on the basis of such classification, or promotes the position that a group or an individual's action is inherently, unconsciously, or implicitly biased on the basis of such classification.

(g) "State" means the State of Florida.

2. Contract Formation and Amendment.

a. Formation. If the Contract is a written agreement as defined in Rule 60A-1.001, F.A.C., the Contract is effective upon the date last signed by all parties, unless a different date is specified herein. If the Contract is a purchase order as defined in Rule 60A-1.001, F.A.C., the Contract is effective upon the date of issuance by the Customer to the Contractor, and the Contractor's performance under the purchase order is deemed to be acceptance of the terms thereof.

b. Amendment. The Contract contains all the terms and conditions agreed upon by the parties and will govern all transactions between the parties. The Contract may only be amended upon mutual written agreement signed by both parties, or upon the Customer's issuance of a change order to a purchase order, as defined in Rule 60A-1.001, F.A.C., deemed to be accepted by the Contractor upon the continued performance thereof. No oral agreements or representations will be valid or binding upon either party. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to the Product upon delivery (e.g., attachment or inclusion of standard preprinted forms, service agreements, end user agreements, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. The Customer's acceptance of the Product or processing of documentation on forms furnished by the Contractor for approval or payment will not constitute acceptance of the proposed modification to the Contract terms and conditions.

The parties may, by amendment, modify the Contract to alter, add to, or deduct from the Contract specifications, provided that such changes are within the general scope of the Contract. The parties may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. The parties may also make an equitable adjustment in price if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Term Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.

If the Contract is a purchase off a term contract, as defined in section 287.012, F.S., the purchase is limited to Products offered under the Term Contract, and no additional Products may be provided under a purchase off the Term Contract.

3. Contract Construction and Administration.

a. Construction. Unless the context requires otherwise, (i) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation;" (ii) the word "or" is not exclusive; and (iii) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to the Contract as a whole, inclusive of all Attachments. Unless the context requires otherwise, references herein to (i) sections or Attachments mean the sections of, or Attachments to, the Contract; (ii) an agreement, instrument, or other document means such

agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (iii) a statute, rule, or other law or regulation means such statute, rule, or other law or regulation as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. Unless the context requires otherwise, whenever the singular is used in the Contract, the same will include the plural, and whenever the plural is used herein, the same will include the singular, where appropriate. All references to "$" or "dollars" means the United States Dollar, the official and lawful currency of the United States of America.

The Contract will be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Attachments referred to herein will be construed with, and as an integral part of, the Contract to the same extent as if they were set forth verbatim herein.

b. Administration.

i. Execution in Counterparts. If the Contract is a written agreement as defined in Rule 60A-1.001, F.A.C., it may be executed in counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

ii. Warranty of Authority. Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract. If the Contract is a purchase order, as defined in Rule 60A-1.001, F.A.C., the Contractor warrants that the individual established to receive the purchase order is authorized to do so and to bind the Contractor to the terms of the Contract.

iii. Notices. Where the term “written notice” is used to specify a notice requirement herein, said notice will be deemed to have been given (i) when personally delivered; (ii) when transmitted via facsimile (with confirmation of receipt) or email (with confirmation of receipt); (iii) the day immediately following the day (except if not a Business Day then the next Business Day) on which the notice or communication has been provided prepaid by the sender to a recognized overnight delivery service; or (iv) on the date actually received except where there is a date of the certification of receipt.

Unless otherwise specified, each party shall deliver all notices to the other party’s Contract Manager. Either party may notify the other by email of a change to a designated contact providing the contact information for the newly designated contact, and such notice is sufficient to effectuate this change without requiring a written amendment to the Contract or the issuance of a change order.

iv. Severability. If a court deems any non-material provision of the Contract void or unenforceable, all other provisions will remain in full force and effect. Upon a determination that any material provision is void or unenforceable, the parties shall negotiate in good faith to modify this Contract to give effect to the original intent of the parties as closely as possible in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

v. Waiver. The delay or failure by the Customer to exercise or enforce any of its rights under the Contract will not constitute or be deemed a waiver of the Customer’s right

thereafter to enforce those rights, nor will any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

vi. Survivability. The Contract and any promises, covenants, and representations made herein are binding upon the parties hereto and all respective heirs, assigns, and successors in interest. The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of the Contract, including without limitation, the obligations regarding overpayments, confidentiality, indemnity, proprietary interests, and public records, will survive termination or expiration of the Contract.

vii. Third Party Beneficiaries. The parties acknowledge and agree that the Contract is for the benefit of the parties hereto and any permitted assignee. The Contract is not intended to confer any legal rights or benefits on any other party.

4. Contract Term, Suspension, and Termination.

a. Term. The initial term of the Contract will be as indicated in the Contract. The Customer, in its sole discretion, may renew the Contract, in whole or in part, for a period that may not exceed three (3) years or the initial term of the Contract, whichever is longer, by providing written notice to the Contractor. If the Contract was awarded pursuant to a competitive solicitation, as defined in section 287.012, F.S., the pricing for the renewal period will be as set forth in the Contractor's response to the competitive solicitation. No costs may be charged for the renewal, and the renewal is contingent upon satisfactory performance evaluations and subject to availability of funds. Exceptional purchase contracts pursuant to sections 287.057(3)(a) and (c), F.S., may not be renewed.

b. Suspension of Work. The Customer may, in its sole discretion, suspend any or all activities under the Contract, at any time, when in the best interests of the Customer to do so. The Customer shall provide the Contractor written notice outlining the particulars of the suspension. Examples of the reason for suspension include budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall cease performance to the extent required by the notice. Within ninety (90) calendar days of the suspension, or any longer period agreed to by the Contractor, the Customer shall either (i) issue a notice authorizing the resumption of performance, at which time the Contractor shall resume activity; or (ii) terminate the Contract. Suspension of work will not entitle the Contractor to any compensation for services not performed or commodities not delivered during the suspension period nor for any additional compensation.

c. Termination.

i. Termination for Convenience. The Customer, by written notice to the Contractor thirty (30) calendar days in advance, may terminate the Contract in whole or in part when the Customer determines in its sole discretion that it is in the Customer's interest to do so. The Contractor shall not furnish any Product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor will not be entitled to recover any cancellation charges or lost profits.

ii. Termination for Cause. The Customer may terminate the Contract if the Contractor fails to (i) deliver the Product within the time specified in the Contract or any extension agreed to by the Customer, (ii) maintain adequate progress, thus endangering the performance of the Contract, (iii) honor any term of the Contract, or (iv) abide by any statutory, regulatory, or licensing requirement. The Customer may, at its sole discretion, (i) immediately terminate the Contract, (ii) notify the Contractor of the deficiency with a Contract requirement and require that the deficiency be corrected within a specified time, otherwise the Contract will terminate at the end of such time, or (iii) take other action deemed appropriate by the Customer. The Contractor shall continue to work on any work not terminated.

Except for defaults of subcontractors at any tier, the Contractor will not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor will not be liable for any excess costs for failure to perform, unless the subcontracted Products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract. The Customer shall notify the Department of Management Services of any vendor that has met the grounds for placement of the vendor on the Department of Management Services' Suspended Vendor List, as required in section 287.1351, F.S.

iii. Termination for Non-Compliance with E-Verify. Pursuant to section 448.095(5)(c)1., F.S., the Customer shall terminate the Contract if it has a good faith belief that the Contractor has knowingly violated section 448.09(1), F.S. Pursuant to section 448.095(5)(c)2., F.S., if the Customer has a good faith belief that a subcontractor knowingly violated section 448.09(1), F.S., the Customer shall promptly notify the Contractor and order the Contractor to immediately terminate the contract with the subcontractor.

iv. Termination Related to Statutory Certifications. At the Customer's option, the Contract may be terminated if the Contractor is placed on any of the lists referenced in the attached PUR 7801, Vendor Certification Form, or would otherwise be prohibited from entering into or renewing the Contract based on the statutory provisions referenced therein.

v. Termination for Refusing Access to Public Records. In accordance with section 287.058(1)(c), F.S., the Customer may unilaterally terminate the Contract if the Contractor refuses to allow public access to all documents, papers, letters, or other

material made or received by the Contractor in conjunction with the Contract, unless the records are exempt from Article I, Section 24(a) of the Florida Constitution and section 119.07(1), F.S.

vi. Termination for Non-Appropriation. In accordance with section 287.0582, F.S., the Customer may terminate the Contract if, in the Customer's determination, no annual appropriation is provided for the Contract, or the Products provided hereunder, by the Legislature.

5. Performance.

a. Warranty of Ability to Perform. Upon the effective date of the Contract, and each year on the anniversary date of the Contract, the Contractor shall submit to the Customer a completed PUR 7801, Vendor Certification Form. This requirement will not apply to purchases off a term contract, as defined in section 287.012, F.S., unless specifically requested in the Contract by the Customer.

Additionally, the Contractor shall promptly notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract (including potential inability to renew the Contract due to section 287.138 or 908.111, F.S.) or if it or its suppliers, subcontractors, or consultants under the Contract are placed on the Suspended Vendor, Convicted Vendor, Discriminatory Vendor, or Antitrust Violator Vendor Lists. The Contractor shall use commercially reasonable efforts to avoid or minimize any delays in performance and shall inform the Customer of the steps the Contractor is taking or will take to do so, and the projected actual completion (or delivery) time. If the Contractor believes a delay in performance by the Customer has caused or will cause the Contractor to be unable to perform its obligations on time, the Contractor shall promptly so notify the Customer and use commercially reasonable efforts to perform its obligations on time notwithstanding the Customer's delay.

b. Further Assurances. The parties shall, with reasonable diligence, do all things and provide all reasonable assurances as may be necessary to complete the requirements of the Contact, and each party shall provide such further documents or instruments requested by the other party as may be reasonably necessary or desirable to give effect to the Contract and to carry out its provisions. The Customer is entitled at all times, upon request, to be advised as to the status of work being done by the Contractor and the details thereof.

c. Assignment. The Contractor shall not sell, assign, or transfer any of its rights, duties, or obligations under the Contract without the prior written consent of the Customer. However, the Contractor may waive its right to receive payment and assign the same upon written notice to the Customer. In the event of any assignment, the Contractor remains secondarily liable for the performance of the Contract, unless the Customer expressly waives such secondary liability in writing. The Customer may assign the Contract with prior written notice to the Contractor of its intent to do so.

d. Employees, Subcontractors, and Agents.

i. Subcontracting. The Contractor is solely responsible for ensuring that any subcontractor(s) utilized perform in accordance with the Contract, and the Contractor

acknowledges that it will not be released of its contractual obligations to the Customer because of any subcontract. The use of the term "subcontractor" may refer to affiliates, resellers, dealers, distributors, partners, teammates, and all other third parties utilized by the Contractor at any tier under the Contract.

The Contractor shall use only those subcontractors approved by the Customer in writing. Subcontractors named in the Contract will be deemed to be approved by the Customer. For subcontractors proposed after the effective date of the Contract, the Contractor shall submit a written request to the Customer's Contract Manager specifying (i) the name of the proposed subcontractor; (ii) the services to be performed by the subcontractor; (iii) the time of performance; (iv) the Contractor's proposed method of subcontractor performance monitoring; (v) certification of subcontractor's compliance with all legal and contractual requirements related to performance (e.g., licensing, background screening, insurance etc.); (vi) a copy of the subcontract, if requested by the Customer; and (vii) indication of whether the subcontractor is an Office of Supplier Diversity registered Florida-based woman-, veteran-, or minority-owned small businesses. The Customer has the final approval authority of all proposed subcontractors. The Contractor's use of a subcontractor not approved by the Customer will be considered a material breach of the Contract.

ii. Qualifications and Access. All Contractor employees, subcontractors, or agents performing work under the Contract must be properly trained technicians who meet or exceed any specified training qualifications. Upon request, the Contractor shall furnish a copy of technical certification or other proof of qualification. All Contractor employees, subcontractors, or agents performing work under the Contract shall comply with all Contract terms and controlling laws and regulations relevant to the work being performed. The Customer may either conduct, and the Contractor shall cooperate in, or require the Contractor to conduct, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The Customer may refuse access to, or require replacement of, any employee, subcontractor, or agent for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with the Customer's security or other requirements. The Customer may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

iii. E-Verify. The Contractor shall comply with section 448.095, F.S., including the obligation to register with and use the U.S. Department of Homeland Security's (DHS) E-Verify system to verify the work authorization status of all new employees of the Contractor.

iv. Independent Contractor. The Contractor and its employees, agents, representatives, and subcontractors are not employees or agents of the Customer or State and are not entitled to any benefits of Customer or State employees. The parties shall take all actions necessary to ensure that Contractor's employees, subcontractors, and other agents are not construed as such. Such actions include ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the Customer or State. Neither the Customer nor the State will be bound by any acts or

conduct of the Contractor or its employees, subcontractors, or agents. The Contractor shall include this provision in all of its subcontracts under the Contract.

e. Transportation and Delivery. Unless otherwise specified, prices listed in the Contract for commodities include all charges for packing, handling, freight, distribution, and inside delivery. Transportation must be FOB Destination to any point within thirty (30) calendar days after the Customer places an order. The Contractor, within five (5) Business Days after receiving an order, shall notify the Customer of any potential delivery delays. Evidence of inability to timely deliver or intentional delays will be considered a material breach of the Contract.

f. Packaging. Tangible Products must be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging will become and remain the Customer's property.

g. Installation. Where installation is required under the Contract, the Contractor shall be responsible for placing and installing the Product in the required locations at no additional charge, unless otherwise specified in the Contract. The Contractor's authorized Product and price list must clearly and separately identify any additional installation charges. All materials used in the installation must be of good quality and free of defects that would diminish the Product's appearance or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the Product in the proper location. The Contractor shall protect the site from damage and shall repair damages or injury caused during installation, unless caused by the Customer. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. The Contractor shall perform installation work to cause the least inconvenience and interference with the Customer's use of the site and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work must be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

h. Risk of Loss. Until acceptance, the risk of loss or damage will remain with the Contractor. The Contractor shall file, process, and collect all damage claims. To assist the Contractor with damage claims, the Customer shall (i) record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; (ii) report damages to the carrier and the Contractor; and (iii) provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. If the Customer rejects a Product, the Contractor shall remove it from the premises within ten (10) Business Days after notification of rejection. Upon rejection notification, the risk of loss of a rejected or non-conforming Product will remain with the Contractor. Rejected Product not removed by the Contractor within ten (10) Business Days will be deemed abandoned by the Contractor, and the Customer will have the right to dispose of it as its own property. The Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of a rejected Product.

i. Literature. Upon request, the Contractor shall furnish literature reasonably related to the

Product offered, including user manuals, price schedules, catalogs, and descriptive brochures.

j. Product Version. The Contract will be deemed to reference a manufacturer's most recently released model or version of the Product at the time of the order unless the Customer specifically requests in writing an earlier model or version and the Contractor is willing to provide such model or version.

k. Real Property. Pursuant to section 287.05805, F.S., any State funds provided for the purchase of or improvements to real property are contingent upon the Contractor granting to the State a security interest in the property at least to the amount of State funds provided for at least five (5) years from the date of purchase or the completion of the improvements or as further required by law.

l. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE). In accordance with section 946.515(6), F.S., if the Contractor is a private contract vendor and if a product or service required for the performance of the Contract is certified by or is available from PRIDE and has been approved in accordance with section 946.515(2), F.S., the following statement applies:

> IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES WHICH ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM THE CORPORATION IDENTIFIED UNDER CHAPTER 946, F.S., IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 946.515(2) AND (4), F.S.; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THIS AGENCY INSOFAR AS DEALINGS WITH SUCH CORPORATION ARE CONCERNED.

The above clause is not applicable to subcontractors unless otherwise required by law. Additional information about PRIDE and the products it offers is available at http://www.pride-enterprises.org.

m. Products Available from the Blind or Other Handicapped (RESPECT). In accordance with section 413.036(3), F.S., if the Contractor is a private contract vendor and if a product or service required for the performance of the Contract is on the procurement list established pursuant to section 413.035(2), F.S., the following statement applies:

> IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES THAT ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM A NONPROFIT AGENCY FOR THE BLIND OR FOR THE SEVERELY HANDICAPPED THAT IS QUALIFIED PURSUANT TO CHAPTER 413, F.S.; IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 413.036(1) AND (2), F.S.; AND FOR PURPOSES OF THIS CONTRACT, THE PERSON, FIRM OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THE STATE AGENCY INSOFAR AS

DEALINGS WITH SUCH QUALIFIED NONPROFIT AGENCY ARE CONCERNED.

Additional information about the designated nonprofit agency and the products it offers is available at http://www.respectofflorida.org.

n. Force Majeure, Notice of Delay, and No Damages for Delay. The Contractor will not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees, subcontractors, or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect suppliers if no alternate source of supply is available to the Contractor.

In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (i) within ten (10) calendar days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result; or (ii) if a delay is not reasonably foreseeable, within five (5) calendar days after the date the Contractor first had reason to believe that a delay could result. THE FOREGOING WILL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO ANY DELAY except if such delay is caused by the fraud, bad faith, or active interference of the Customer. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy, and a rebuttable presumption of prejudice will exist based on Contractor's untimely notice. The Contractor shall not assert any claim for damages related to such delay. The Contractor will not be entitled to an increase in the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact, or other costs, expenses, or damages, including costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever.

If performance is suspended or delayed, in whole or in part, due to any of the causes described in this subsection 5.n., the Customer may unilaterally (and with no recourse on the part of the Contractor) identify and use an alternate source to complete any work under the Contract as the Customer deems necessary, in its sole discretion. After the causes have ceased to exist, the Contractor shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the Customer or State, in which case the Customer may (i) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to the Customer with respect to Products subjected to allocation; or (ii) terminate the Contract in whole or in part.

o. Exclusivity. The Contract is not an exclusive license to provide the Products described in the Contract. The Customer may, without limitation and without recourse by the Contractor, contract with other vendors to provide the same or similar Products.

6. Inspection.

a. Inspection at Contractor's Site. The Customer reserves the right to inspect, at any

reasonable time with prior notice, the equipment, product, plant or other facilities of the Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.

b. Statutory Inspection Rights. If services are to be provided pursuant to the Contract, in accordance with section 216.1366, F.S., the Customer is authorized to inspect the: (i) financial records, papers, and documents of the Contractor that are directly related to the performance of the Contract or the expenditure of State funds; and (ii) programmatic records, papers, and documents of the Contractor which the Customer determines are necessary to monitor the performance of the Contract or to ensure that the terms of the Contract are being met. The Contractor shall provide such records, papers, and documents requested by the Customer within ten (10) Business Days after the request is made.

Further, for any Contract for services with a nonprofit organization as defined in section 215.97(2)(m), F.S., the Contractor must provide documentation that indicates the amount of state funds:

1. Allocated to be used during the full term of the contract for remuneration to any member of the board of directors or an officer of the contractor; and
2. Allocated under each payment by the public agency to be used for remuneration of any member of the board of directors or an officer of the contractor.

The documentation must indicate the amounts and recipients of the remuneration.

c. Inspection Compliance. The Contractor understands its and its subcontractors' (if any) duty, pursuant to section 20.055(5), F.S., to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any information the State official deems relevant to the Contractor's integrity or responsibility.

Such information may include the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of the Contract or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs will include investigators' salaries, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor will not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

7. Payment.

a. Annual Appropriations. Pursuant to section 287.0582, F.S., the State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature.

b. Invoicing and Payment. The Contractor shall include the Contract number and vendor identification information on all invoices. The Customer may require any other information from the Contractor that it deems necessary to verify any charges shown on

the invoice, including detail sufficient for a proper preaudit or post-audit for such bills pursuant to section 287.058(1)(a), F.S.

The Customer shall make payments in accordance with section 215.422, F.S., which governs time limits for payment of invoices. The Contractor shall make payments to any subcontractors and suppliers in accordance with section 287.0585, F.S., if applicable. Invoices that must be returned to a Contractor due to preparation errors will delay payment. The Customer is responsible for all payments under the Contract.

The Department of Financial Services has established a Vendor Ombudsman for vendors having trouble obtaining timely payment from State agencies. The Vendor Ombudsman can be reached at (850) 413-5516.

c. Overpayments. The Contractor shall return any overpayments, including those due to unearned funds or funds disallowed pursuant to the terms of the Contract that were disbursed to the Contractor by the Customer. The Contractor shall return any overpayment within forty (40) calendar days after the earlier of: (1) discovery by the Contractor (including discovery by its independent auditor, if any), or (2) notification by the Customer of the overpayment.

d. Transaction Fee. The State, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to section 287.057(24), F.S. All payments issued by agencies to registered vendors for purchases of commodities or contractual services under Chapter 287, F.S., shall be assessed a transaction fee of one percent (1.0%) of the total amount of the payments received from the State or eligible users, as prescribed by Rule 60A-1.031, F.A.C., or as may otherwise be established by law. Vendors shall pay the Transaction Fee and are subject to automatic deduction of the transaction fee, when automatic deduction becomes available. Vendors shall submit any monthly reports required pursuant to Rule 60A-1.031, F.A.C. All such reports and payments are subject to audit. The Customer will have grounds for declaring the vendor in default if the vendor fails to comply with the payment of the transaction fee or reporting of payments, which may subject the vendor to being suspended from business with the State.

e. Taxes. The Customer, as a governmental entity of the State, does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The Customer will not pay for any personal property taxes levied on the Contractor or any taxes levied on employees' wages. The Customer will explicitly note any exceptions to this paragraph in the Contract.

f. Leases and Installment Purchases. In accordance with section 287.063, F.S., if the Contract provides for a lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017, F.S., then the Customer's obligations under the Contract are contingent upon approval of the Contract by the Chief Financial Officer, as defined in section 17.001, F.S.

g. Travel. Pursuant to section 287.058(1)(b), F.S., if travel is authorized under the Contract, the Contractor shall submit such in accordance with section 112.061, F.S., except that the Customer may establish rates lower than the maximum provided in section 112.061, F.S.

h. Retention of Payments. The Customer may, in addition to other remedies available to it at law or equity and upon written notice to the Contractor, retain such monies from amounts due to the Contractor as may be necessary to satisfy any claim for payment, including under the indemnification clause, payment for financial consequences, and payment for damages and the like asserted by or against the Customer. The Customer reserves the right to set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due to the Contractor under any contract with the State. The exercise of these rights will not be a breach of the Contract, nor will they in any way entitle the Contractor to a claim against the Customer or State, including for damages.

8. Disputes and Liabilities.

a. Dispute Resolution. Should any disputes arise concerning the Contract, the parties shall act immediately to resolve any such disputes. Time is of the essence in the resolution.

i. Dispute Resolution Process.

(a) Contract Manager Review. The parties shall resolve disputes through the submission of their dispute to the Customer's Contract Manager, who shall reduce a decision to writing and furnish a copy to each party within ten (10) Business Days from the date that the Customer's Contract Manager receives the dispute. The Customer's Contract Manager's decision shall be final unless a party provides the other party with written notice of the party's disagreement with the decision within ten (10) Business Days from the date of the Customer's Contract Manager's decision. If a party disagrees with the Customer's Contract Manager's decision, the party may proceed to subsection (b) below.

(b) Meeting between the Principals. If either party disagrees with the Customer's Contract Manager's decision, such disagreeing party shall notify the other party of the disagreement within ten (10) Business Days. The parties shall then schedule a meeting between each party's principal (for the Customer, the Customer head or designee; for the Contractor, the Chief Executive Officer or designee) on a mutually agreed upon date, no later than ten (10) Business Days after the provision of the notice. The principals shall attempt to mutually resolve the disagreement at such meeting. If the meeting between the principals fails to resolve the disagreement, the parties shall proceed to subsection (c) below.

(c) Mediation. Prior to initiating any litigation, the parties, upon mutual agreement, may mediate such dispute. If such mediation is not completed within 100 calendar days from receipt of the Customer's Contract Manager's decision, then either party may commence litigation.

If the dispute is not resolved through the full process in subsections (a) - (c) above (or (a) – (b), if mediation is not agreed to), either party may pursue any available legal or equitable remedies.

ii. Contractor's Obligation to Perform While Disputes are Pending. The Contractor shall proceed diligently with performance under the Contract pending the final resolution of any dispute or request for relief, claim, appeal, or action arising under the Contract and shall comply with directions to perform from the Customer. Should the Contractor not perform while a dispute is pending, including by not performing disputed work,

such nonperformance by the Contractor may be deemed to be an unexcused breach of the Contract which is separate and apart from any other dispute.

b. Governing Law and Venue. The Contract will be governed by, and construed in accordance with, the laws of the State. Jurisdiction and venue for suit arising under the terms of the Contract will exclusively be in the appropriate State court located in Leon County, Florida. Except as otherwise provided by law, the parties agree to be responsible for their own attorney's fees and costs incurred in connection with disputes arising under the Contract terms.

c. Remedies Cumulative. No remedy herein conferred upon or reserved to either party is intended to be exclusive of any other remedy or remedies, and each and every such remedy will be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

d. JURY WAIVER. THE PARTIES, ON BEHALF OF THEMSELVES AND ASSIGNS, WAIVE ALL RIGHTS TO TRIAL BY JURY FOR ANY ACTION, APPEAL, CLAIM, OR PROCEEDING, WHETHER IN LAW OR IN EQUITY, WHICH IN ANY WAY ARISES OUT OF OR RELATES TO THE CONTRACT OR ITS SUBJECT MATTER.

e. Insurance Requirements.

i. Coverages.

(a) In General. During the Contract term, the Contractor shall, at its sole expense, provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract.

(b) Workers' Compensation Insurance. The Contractor shall maintain Workers' Compensation insurance as required by State law; to the extent that any work required by the Contract will be performed outside of the State, the Contractor shall maintain Workers' Compensation Insurance as required by that jurisdiction. If work is being performed by the Contractor under the Contract and any class of employees performing the work is not protected under Workers' Compensation statutes, the Contractor shall provide adequate insurance, satisfactory to the Customer, for the protection of employees not otherwise protected.

ii. Terms.

(a) In General. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. Upon request, the Contractor shall provide the Customer with certificate(s) of insurance. The limits of coverage under each policy maintained by the Contractor will not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies must be through insurers authorized or eligible to write policies in the State or through a self-insurance program established and operating under the laws of the State. The Contractor shall notify the Customer sixty (60) calendar days before any policy is canceled or terminated. All insurance policies must also provide that the insurer notifies the Customer if the policy is cancelled.

(b) No Loss Deductible Clause. The Customer will be exempt from, and in no way

liable for, any sums of money that may represent a deductible in any insurance policy. The Contractor shall be solely responsible for payment of such deductible.

(c) Duration. The insurance policies identified above must be "per occurrence" and maintained throughout the Contract term.

(d) Subcontractor's Insurance. The Contractor shall ensure that its subcontractors maintain the levels of insurance as required in this section.

f. Indemnification. For any and all third-party claims, actions, demands, liabilities, and expenses of any kind which are caused by, related to, growing out of or happening in connection with the Contract (including any determination arising out of or related to the Contract that the Contractor or its employees, agents, subcontractors, assignees, or delegates are not independent contractors in relation to the Customer or State), the Contractor shall be fully liable for the actions of its employees, subcontractors, and agents and shall fully indemnify, defend, and hold harmless the Customer and the State (including each of their current and former officers, agents, and employees) for any and all loss, damage, injury, costs, reasonable expenses, or other casualty to person or property. Without limiting this indemnification requirement, the Customer may provide the Contractor (i) written notice of any action or threatened action, (ii) the opportunity to take over and settle or defend any such action at the Contractor's sole expense, and (iii) assistance in defending the action at the Contractor's sole expense. The above indemnity requirement does not apply to that portion of any loss or damages proximately caused by the negligent act or omission of the Customer or the State. Nothing herein is intended to act as a waiver of the Customer's or State's sovereign immunity or to be deemed consent by the Customer or State or its subdivisions to suit by third parties.

If any Product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Customer the right to continue using the Product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the Product, the Contractor shall remove the Product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The Customer will not be liable for any royalties.

g. Limitation of Liability. For all claims against the Contractor under the Contract, and regardless of the basis on which the claim is made, the Contractor's aggregate liability for direct damages under the Contract will be limited to the greater of $200,000 or the dollar value of the Contract (which is the higher of the total estimated value of the Contract or two times the charges for Products rendered by the Contractor under the Contract if no estimated value is determinable). This limitation will not apply to any claim arising under an indemnity provision of the Contract or any provision of the Contract relating to insurance required to be provided by the Contractor.

Unless otherwise specifically enumerated in the Contract, no party will be liable to the other for special, indirect, punitive, or consequential damages, including lost data or records (unless the Contract requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party will be liable for lost profits, lost revenue, or lost institutional operating savings.

For damages other than those excluded in the preceding paragraph, the Customer's liability is limited to: 1) if the damage is the Customer's failure to pay amounts due to the Contractor for Products received and accepted by the Customer pursuant to the Contract, then only the amount due for such Products and any interest owed under section 215.422, F.S.; or 2) in the event the damage is not related to the Customer's failure to comply with the payment provisions of the Contract, to the maximum of the limited waiver of sovereign immunity provided for in section 768.28, F.S.

9. Compliance with Laws.

a. In General. The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business and that are applicable to the Contract, including those of federal, state, and local agencies having jurisdiction and authority, and shall ensure that any and all subcontractors utilized do the same. The Contractor represents and warrants that no part of the funding under the Contract will be used in violation of any state or federal law, including, but not limited to, 8 U.S.C. § 1324 or 8 U.S.C. § 1325, or to aid or abet another in violating state or federal law. The Customer may terminate the Contract at any time if the Contractor violates, or aids or abets another in violating, any state or federal law.

If the requirements of the Contract conflict with any governing law, codes, or regulations, the Contractor shall notify the Customer in writing, and the parties shall amend the Contract to comply with the applicable code or regulation. Similarly, if the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the Products, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the complete discretion to accept any such alteration or to terminate the Contract at no further expense to the Customer.

b. Lobbying and Integrity. The Contractor shall not use funds provided under the Contract in a manner that violates the provisions of sections 11.062 and 216.347, F.S. Pursuant to section 287.058(6), F.S., the Contract does not prohibit the Contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the Contract during the Contract's term. In addition to any applicable statutory restrictions, the Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (i) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercises of discretion, or violation of a known legal duty; or (ii) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (ii), "gratuity" means any payment in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

c. Accessibility Requirements. If the Products to be provided include an information technology system that is accessed by the public or State employees, the Contractor shall comply with section 508 of the Rehabilitation Act of 1973, as amended and 29 U.S.C. s. 794(d), including the regulations set forth under 36 C.F.R. part 1194. Section 282.601(1),

F.S., states that "state government shall, when developing, competitively procuring, maintaining, or using electronic information or information technology acquired on or after July 1, 2006, ensure that State employees with disabilities have access to and are provided with information and data comparable to the access and use by State employees who are not individuals with disabilities."

10. Public Records.

a. General Record Management and Retention. The Contractor shall retain sufficient records to substantiate claims for payment under the Contract and shall retain all other records that were made in relation to the Contract for the longer of five (5) years after the expiration of the Contract or the period required by the General Records Schedules maintained by the Florida Department of State available at: https://dos.fl.gov/library-archives/records-management/general-records-schedules/.

b. Identification and Protection of Confidential Information. Article 1, section 24, of the Florida Constitution, guarantees every person access to public records, and section 119.011, F.S., provides a broad definition of "public record." As such, records submitted to the Customer (or any other State agency) are public records and are subject to disclosure unless exempt from disclosure by law. If the Contractor considers any portion of a record it provides to the Customer (or any other State agency) to be trade secret or otherwise confidential or exempt from disclosure under Florida or federal law ("Confidential Information"), the Contractor shall mark as "confidential" each page of a document or specific portion of a document containing Confidential Information and simultaneously provide the Customer (or other State agency) with a separate, redacted copy of the record. The Contractor shall state the basis of the exemption that the Contractor contends is applicable to each portion of the record redacted, including the specific statutory citation for such exemption. The Contractor shall only redact portions of records that it claims contains Confidential Information. If the Contractor fails to mark a record it claims contains Confidential Information as "confidential," or fails to submit a redacted copy in accordance with this section of a record it claims contains Confidential Information, the Customer (or other State agency) shall have no liability for release of such record. The foregoing will apply to every instance in which the Contractor fails to both mark a record "confidential" and redact it in accordance with this section, regardless of whether the Contractor may have properly marked and redacted the same or similar Confidential Information in another instance or record submitted to the Customer (or any other State agency).

In the event of a public records request, to which records the Contractor marked as "confidential" are responsive to the request, the Customer shall provide the Contractor-redacted copy to the requestor. If the Contractor has marked a record as "confidential" but failed to provide a Contractor-redacted copy to the Customer, the Customer may notify the Contractor of the request and the Contractor may have up to ten (10) Business Days from the date of the notice to provide a Contractor-redacted copy, or else the Customer may release the unredacted record to the requestor without liability. If the Customer provides a Contractor- redacted copy of the documents and the requestor asserts a right to the Contractor-redacted Confidential Information, the Customer shall promptly notify the Contractor such an assertion has been made. The notice will provide that if the Contractor seeks to protect the Contractor-redacted Confidential Information from release it must, within thirty (30) days after the date of the notice and at its own expense, file a cause of

action seeking a declaratory judgment that the information in question is exempt from section 119.07(1), F.S., or other applicable law and an order prohibiting the Customer from publicly disclosing the information. The Contractor shall provide written notice to the Customer of any cause of action filed. If the Contractor fails to file a cause of action within thirty (30) days the Customer may release the unredacted copy of the record to the requestor without liability.

If the Customer is requested or compelled in any legal proceeding to disclose documents that are marked as "confidential" (whether by oral questions, interrogatories, requests for information or documents, subpoena, or similar process), unless otherwise prohibited by law, the Customer shall give the Contractor prompt written notice of the demand or request prior to disclosing any Confidential Information to allow the Contractor to seek a protective order or other appropriate relief at the Contractor's sole discretion and expense. If the Contractor fails to take appropriate and timely action to protect the Confidential Information contained within documents it has marked as "confidential" or fails to provide a redacted copy that may be disclosed, the Customer may provide the unredacted records in response to the demand without liability.

The Contractor shall protect, defend, and indemnify the Customer for all claims, costs, fines, settlement fees, and attorneys' fees, at both the trial and appellate levels, arising from or relating to the Contractor's determination that its records contain Confidential Information. In the event of a third-party claim brought against the Customer for failure to release the Contractor's redacted Confidential Information, the Contractor shall assume, at its sole expense, the defense or settlement of such claim, including attorney's fees and costs at both the trial and appellate levels. If the Contractor fails to continuously undertake the defense or settlement of such claim or if the Contractor and Customer mutually agree that the Customer is best suited to undertake the defense or settlement, the Customer will have the right, but not the obligation, to undertake the defense or settlement of such claim, at its discretion. The Contractor shall be bound by any defense or settlement the Customer may make as to such claim, and the Contractor agrees to reimburse the Customer for the expense, including reasonable attorney's fees and costs at both the trial and appellate levels associated with any defense or settlement that the Customer may undertake to defend Contractor's Confidential Information. The Customer will also be entitled to join the Contractor in any third-party claim for the purpose of enforcing any right of indemnity under this section.

If at any point the Customer is reasonably advised by its counsel that disclosure of the Confidential Information is required by law, including but not limited to Florida's public records laws, the Customer may disclose such Confidential Information without liability hereunder.

c. Public Records Requirements Pursuant to Section 119.0701, F.S. Solely for the purpose of this section, the Customer's Contract Manager is the agency custodian of public records. If, under the Contract, the Contractor is providing services and is acting on behalf of the public agency, as provided in section 119.0701, F.S., the Contractor shall:

i. Keep and maintain public records required by the Customer to perform the service.

ii. Upon request from the Customer's custodian of public records, provide the Customer with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.

iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the contract term and following the completion of the Contract if the Contractor does not transfer the records to the Customer.

iv. Upon completion of the Contract, transfer, at no cost, to the Customer all public records in possession of the Contractor or keep and maintain public records required by the Customer to perform the service. If the Contractor transfers all public records to the Customer upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Customer, upon request from the Customer's custodian of public records, in a format that is compatible with the information technology systems of the Customer.

v. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE TELEPHONE NUMBER, EMAIL ADDRESS, AND MAILING ADDRESS PROVIDED FOR THE CONTRACT MANAGER.

d. Advertising. Unless legally obligated, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including mentioning the Contract in a press release or other promotional material, identifying the Customer or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the Customer or the State in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual entities eligible to make purchases pursuant to section 12, below, or authorized distributors, dealers, resellers, or service representatives.

11. Security and Confidentiality. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its employees, subcontractors, or agents in the course of performing Contract work, including security procedures, business operations information, or commercial proprietary information in the possession of the Customer or State. The Contractor will not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the Customer's or State's confidential information, or material that is otherwise obtainable under State law as a public record. To ensure confidentiality, the Contractor shall take appropriate steps as to its employees, subcontractors, and agents.

12. **Cooperative Purchasing.** Pursuant to their own governing laws, and subject to the Contractor's agreement, other entities may be permitted to make purchases at the terms and conditions contained herein. Such purchases are independent of this Contract, and the Customer will not be a party to any transaction between the Contractor and any other purchaser.

    State agencies wishing to make purchases off this Contract must follow the provisions of sections 287.042 and 287.057(3)(b), F.S., which may require prior approval of the Department of Management Services.