Purchase Order
Terms & Conditions

The Contractor and Department of Children and Families (Department) agree to the following terms. These Purchase Order Terms replace the MFMP Purchase Order Terms and Conditions in their entirety.

Section 1. General Provisions.

A. Agreement.

The Contractor agrees to provide commodities or contractual services to the Department as set forth in the Purchase Order with these Terms and Conditions and the attached or incorporated documents.

B. Initial Term.

Unless otherwise specified, the Purchase Order begins on the date of issuance. The Contractor shall complete its delivery of commodities or contractual services by the date specified as the Purchase Order end date.

C. Integration.

The Purchase Order with these Terms and Conditions and the attached or incorporated documents set forth the entire agreement between the Department and the Contractor, superseding all prior discussions, representations, or agreements of the parties relating to the commodities or contractual services to be provided under the Purchase Order.

Section 2. Performance.

A. Performance Standards.

The Contractor agrees to perform all tasks and provide deliverables as set forth in the Statement of Work and attachments to the Purchase Order. The Department shall be entitled at all times, upon request, to be advised as to the status of work being done by the Contractor and of the details thereof. Coordination shall be maintained by the Contractor with representatives of the Department, or of others involved in the project on behalf of the Department.

B. Performance Deficiency.

If the Department determines that the performance of the Contractor is unsatisfactory, the Department may notify the Contractor of the deficiency to be corrected, which correction shall be made within a time-frame specified by the Department. The Contractor shall provide the Department with a corrective action plan describing how the Contractor will address all issues of non-performance, unacceptable performance, and failure to meet the minimum performance levels, deliverable deficiencies, or non-compliance under the Purchase Order. If the corrective action plan is unacceptable to the Department, the Contractor will be assessed a non-performance retainage equivalent to 10% of the total invoice amount or as specified in the contractual documents. The retainage will be applied to the invoice for the then-current billing period. The retainage will be withheld until the Contractor resolves the deficiency. If the deficiency is subsequently resolved, the Contractor may invoice the Department for the retained amount during the next billing period. If the Contractor is unable to resolve the deficiency, the funds retained will be forfeited.

Section 3. Payment and Fees.

A. Payment Invoicing.

The Contractor will be paid upon approval of invoice(s) to the Department after delivery and acceptance of commodities or contractual services is confirmed by the Department. Invoices shall contain detail sufficient for audit thereof and shall contain the Purchase Order and the Contractor's Federal Employer Identification Number.

B. Inspection, Approval and Payment Timeframes.

Section 215.422, Florida Statutes (F.S.), provides that agencies have five (5) working days to inspect and approve commodities or contractual services. Items may be tested for compliance with specifications. Items delivered not conforming to specifications may be rejected and returned at the Contractor's expense. Interest penalties for late payment are also provided for in section 215.422, F.S. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this office are found in section 215.422, F.S., which include disseminating information relative to prompt payment and assisting contractors in receiving their payments in a timely manner from an Department. This paragraph shall not be read to limit the Department's rights of warranty under these terms, separately provided by the Contractor, or under law.

C. MyFloridaMarketPlace Fees.

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to section 287.057(22), Florida Statutes. All payments issued by the Department to registered Vendors for purchases of commodities or contractual services will be assessed Transaction Fees as prescribed by rule 60A-1.031, F.A.C., or as may otherwise be established by law. Vendors must pay the Transaction Fees and agree to automatic deduction of the Transaction Fees when automatic deduction becomes available. Vendors will submit any monthly reports required pursuant to the rule. All such reports and payments will be subject to audit. Failure to comply with payment of the Transaction Fees or reporting of transactions will constitute grounds for declaring the Vendor in default and subject the Vendor to exclusion from business with the State of Florida.

D. Payment Audit.

Records of costs incurred under terms of the Purchase Order shall be maintained and made available to the Department upon request during the period of the Purchase Order, and for a period of three years thereafter. Records of costs incurred shall include the Contractor's general accounting records, together with supporting documents and records of the Contractor and all subcontractors performing work, and all other records of the Contractor and subcontractors considered necessary by the Department for audit.

E. Taxes.

Taxes, customs, and tariffs on commodities or contractual services purchased under the Purchase Order will not be assessed against the Department unless authorized by Florida law.

F. Return of Funds.

Contractor will return any overpayments due to unearned funds or funds disallowed pursuant to the terms of the Purchase Order that were disbursed to the Contractor. The Contractor must return any overpayment within forty (40) calendar days after either discovery by the Contractor, its independent auditor, or notification by the Department of the overpayment.

G. Annual Appropriation and Travel.

Pursuant to section 287.0582, F.S., if the Purchase Order binds the State or an executive agency for the purchase of services or tangible personal property for a period in excess of one (1) fiscal year, the State of Florida's performance and obligation to pay under the Purchase Order is contingent upon an annual appropriation by the Legislature. Travel expenses are not reimbursable unless specifically authorized in writing, and shall be reimbursed only in accordance with section 112.061, F.S.

Section 4. Liability and Insurance.

A. Indemnification.

The Contractor shall be fully liable for the actions of its agents employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and the Department, and their officers, agents, and

employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors, provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or the Department.

Further, the Contractor shall fully indemnify, defend, and hold harmless the State and the Department from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to the Department's misuse or modification of Contractor's products or the Department's operation or use of Contractor's products in a manner not contemplated by the Purchase Order or any contract under which the Purchase Order is issued. 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 Department 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 Department the right to continue using the product, the Contractor shall remove the product and refund the Department the amounts paid in excess of a reasonable rental for past use. The Department shall not be liable for any royalties.

The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or the Department giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State or Department in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.

If the Contractor is an agency or subdivision of the State, its obligation to indemnify, defend and hold harmless the Department shall be to the extent permitted by section 768.28, F.S. or other applicable law, and without waiving the limits of sovereign immunity.

B. Payment for Claims.

The Contractor guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Contractor or any employee, agent, subcontractor, assignee or delegate in connection with the Purchase Order.

C. Liability Insurance.

The Contractor shall maintain insurance sufficient to adequately protect the Department from all claims or liability for personal injury or property damage arising out of, resulting from the performance of, or in connection with the operation of, the Purchase Order. All insurance shall be with insurers authorized to transact the applicable line of insurance business in the State of Florida. The Contractor shall provide Certification(s) of Insurance evidencing that all appropriate coverage is in place and showing the Department to be an additional insured.

D. Workers' Compensation.

The Contractor shall maintain Workers' Compensation insurance as required under the Florida Workers' Compensation Law or the workers' compensation law of another jurisdiction where applicable. The Contractor must require all subcontractors to similarly provide Worker's Compensation Insurance for all of the latter's employees. In the event work is being performed by the Contractor under the resulting contract, including the Purchase Order, and any class of employees performing the work is not protected under Worker's Compensation statutes, the Contractor must provide, and cause each subcontractor to provide adequate insurance, satisfactory to the Department, for the protection of employees not otherwise protected.

E. Performance Bond.

Unless otherwise prohibited by law, the Department may require the Contractor to furnish, without additional cost to the Department, a performance bond or irrevocable letter of credit or other form of security for the satisfactory performance of work hereunder. The Department shall determine the type and amount of security.

F. Limitation of Liability.

For all claims against the Contractor under any contractor purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of $250,000, the dollar amount of the contract or purchase order, or two times the charges rendered by the Contractor under the purchase order. This limitation shall not apply to claims arising under the Indemnity paragraph contain in this agreement.

Unless otherwise specifically enumerated in the Purchase Order or any contract under which the Purchase Order is issued, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or Purchase Order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Department may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

Section 5. Compliance with Laws.

A. Conduct of Business.

The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. For example, the Contractor shall comply with Section 247A of the Immigration and Nationality Act, the Americans with Disabilities Act, Health Insurance Portability and Accountability Act, the Occupational Safety and Health Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status.

Pursuant to subsection 287.058(1), F.S., the provisions of subparagraphs 287.058(1)(a)(c), and (g), F.S., are hereby incorporated by reference, to the extent applicable.

B. Lobbying.

In accordance with sections 11.062 and 216.347, F.S., the Purchase Order funds are not for the purpose of lobbying the Legislature, the judicial branch, or an state agency. Pursuant to subsection 287.058(6), F.S., the Purchase Order does not prohibit the Contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the Purchase Order, after the Purchase Order's execution and during the Purchase Order's term.

C. Gratuities.

The Contractor shall not, in connection with the Purchase Order or any other agreement with the State, directly or indirectly (1) offer, give, or agree to give anything of value to anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone anything of value for the benefit of, or at the direction or request of, any State officer or employee.

D. Cooperation with Inspector General and Records Retention.

Pursuant to subsection 20.055(5), F.S., Contractor, and any subcontractor to the Contractor, understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Contractor must provide any information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial

records, documents, or files of any type or form that refer to or relate to the Purchase Order. The Contractor will retain such records for five years after the expiration of the Purchase Order or any contract under which the Purchase Order is issued, or the period required by the General Records Schedules maintained by the Florida Department of State on the Department of State's Records Management website, whichever is longer. The Contractor agrees to reimburse the State of Florida for the reasonable costs of investigation incurred by the Inspector General or other authorized State of Florida official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State of Florida which results in the suspension or debarment of the Contractor. Such costs will include but will not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees.

E. Department of State Registration.

Consistent with Chapters 605 through 623, F.S., the Contractor and any subcontractors that assert status, other than a sole proprietor, must provide the Department with conclusive evidence of a certificate of status, not subject to qualification, if a Florida business entity, or of a certificate of authorization if a foreign business entity.

F. Public Records, Trade Secrets, Document Management and Intellectual Property.

(a) Public Records.

(I) The Department may unilaterally cancel the Purchase Order for refusal by the Contractor to comply with this section by not allowing access to all public records, as defined in Chapter 119, Florida Statutes, made or received by the Contractor in conjunction with the Purchase Order.

(II) Pursuant to section 119.0701(2)(a), F.S., for contracts for services with a contractor acting on behalf of a public agency, as defined in section 119.011(2), F.S., the following applies:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS PURCHASE ORDER, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE TELEPHONE NUMBER, EMAIL ADDRESS AND MAILING ADDRESS PROVIDED IN THE RESULTING CONTRACT OR PURCHASE ORDER.

(III) Pursuant to section 119.0701(2)(b), F.S., for contracts for services with a contractor acting on behalf of a public agency as defined in section 119.011(2), F.S., the Contractor shall:

(1) Keep and maintain public records required by the public agency to perform the service.

(2) Upon request from the public agency's custodian of public records, provide the public agency 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.

(3) 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 term of the Purchase Order and any contract under which the Purchase Order is issued and following the completion of the Purchase Order and any contract under which the Purchase Order is issued if the contractor does not transfer the records to the public agency.

(4) Upon completion of the Purchase Order, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency 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 Purchase Order, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

(b) Protection of Trade Secrets or Confidential Information.

(I) If the Contractor considers any portion of materials made or received in the course of performing the Purchase Order ("contract-related materials") to be trade secret under section 688.002 or 812.081, F.S., or otherwise confidential under Florida or federal law, the Contractor must clearly designate that portion of the materials as trade secret or otherwise confidential when submitted to the Department. The Contractor will be responsible for responding to and resolving all claims for access to contract-related materials it has designated trade secret or otherwise confidential.

(II) If the Department is served with a request for discovery of contract-related materials designated by the Contractor as trade secret or otherwise confidential, the Contractor will be responsible for filing the appropriate motion or objection in response to the request for discovery. The Department will provide materials designated trade secret or otherwise confidential if the Contractor fails to take appropriate and timely action to protect the materials designated as trade secret or otherwise confidential.

(III) The Contractor will protect, defend, indemnify, and hold harmless the Department for claims, costs, fines, and attorney's fees arising from or relating to its designation of contract-related materials as trade secret or otherwise confidential.

(c) Document Management.

The Contractor must retain sufficient documentation to substantiate claims for payment under the Purchase Order and all other records, electronic files, papers and documents that were made in relation to the Purchase Order. Contractor must retain all documents related to the Purchase Order and any contract under which the Purchase Order is issued for five (5) years after expiration of the Purchase Order and any contract under which the Purchase Order is issued, or, if longer, the period required by the General Records Schedules maintained by the Florida Department of State available at the Department of State's Records Management website.

(d) Intellectual Property.

(I) Unless specifically addressed in the Purchase Order, intellectual property rights to all property created or otherwise developed by the Contractor for the Department will be owned by the State of Florida at the completion of the Contract.

(II) Any inventions or discoveries developed in the course of, or as a result of services performed under the Contract which are patentable pursuant to 35 U.S.C. § 101, are the sole property of the State of Florida. Contractor must inform the Department of any inventions or discoveries developed, or made in connection with, the Purchase Order and will be referred to the Florida Department of State for a determination on whether patent protection will be sought for the invention or discovery. The State of Florida will be the sole owner of all patents resulting from any invention or discovery made in connection with this contract.

(III) Contractor must notify the Department or State of Florida of any publications, artwork, or other copyrightable works developed in connection with the Purchase Order. All copyrights created or developed in connection with the Purchase Order are the sole property of the State of Florida.

G. Communications and Confidentiality.

The Contractor agrees that it shall make no statements, press releases, or publicity releases concerning the Purchase Order or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with the Purchase Order, or any particulars thereof, during the period of the Purchase Order, without first notifying the Department's Contract Manager or the Department's designated contact person and securing prior written consent. The Contractor shall not use any statement attributable to the Department or its employees for the Contractor's promotions, press releases, publicity releases, marketing, corporate communications, or other similar communications, without first notifying the Department's Contract Manager and securing the Department's prior written consent.

The Contractor shall maintain confidentiality of all confidential data, files, and records related to the services and/or commodities provided pursuant to the Purchase Order and shall comply with all state and federal laws, including, but not limited to sections 381.004, 384.29, 392.65, and 456.057, F.S. The Contractor's confidentiality procedures shall be consistent with the most recent version of the Department's security

policies, protocols, and procedures. The Contractor shall also comply with any applicable professional standards with respect to confidentiality of information.

H. Data Security.

The Contractor will maintain the security of State of Florida data including, but not limited to, maintaining a secure area around any displayed visible data. In the event of a security breach involving State of Florida data, the Contractor shall promptly give notice to the Department. The Contractor will also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information.

I. Suspended, and Discriminatory Vendor Lists.

In accordance with sections 287.042, 287.133, and 287.134, F.S., an entity or affiliate who is on the Suspended Vendor List, Convicted Vendor List or the Discriminatory Vendor List may not perform work as a contractor, supplier, subcontractor, or consultant under the Contract. The Contractor must notify the Department if it or any of its suppliers, subcontractors or consultants have been placed on the Suspended Vendor List, Convicted Vendor List or the Discriminatory Vendor List during the term of the Contract.

J. Scrutinized Companies - Termination by the Department.

The Department may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), F.S., or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

K. Information Technology Standards.

Pursuant to sections 282.0051 and 282.318, F.S., the Division of State Technology (DST) is to establish standards for the implementation and management of information technology resources. Contractor agrees to cooperate with the Department in furtherance of its efforts to comply with DST standards, established in 60GG, F.A.C., as applicable.

Section 6. Suspension of Work and Termination.

A. Suspension of Work.

The Department may, at its sole discretion, suspend the purchase order, or any activities under it, at any time, when in the best interest of the Department to do so. The Department will provide the Contractor written notice outlining the particulars of the suspension. Examples of a reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor must comply with the notice and will cease the activities associated with any active or new purchase orders. Within ninety (90) calendar days, or any longer period agreed to by the Contractor, the Department will either (1) issue a notice authorizing resumption of work, at which time activity will resume, or (2) terminate the Purchase Order or any contract under which the Purchase Order is issued. Suspension of work will not entitle the Contractor to any additional compensation.

B. Termination for Convenience.

The Purchase Order may be terminated by the Department in whole or in part at any time in the best interest of the State of Florida. If the Purchase Order is terminated before performance is completed, the Contractor will be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the Purchase Order price as the amount of work satisfactorily performed. All work in progress shall become the property of the Department and shall be turned over promptly by the Contractor.

C. Termination for Cause.

If the performance of the Contractor is not in compliance with the Purchase Order, or the Contractor has defaulted, the Department may (a) immediately terminate the Purchase Order, or (b) notify the Contractor of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the

Purchase Order will be terminated at the end of such time, or (c) take other action deemed appropriate by the Department.

D. Force Majeure, Notice of Delay, and No Damages for Delay.

The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees 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 subcontractors or 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 Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) 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 (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Department. The Contractor shall not be entitled to an increase in the Purchase Order price or payment of any kind from the Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to 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 paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Purchase Order or any contract under which the Purchase Order is issued to the State or to the Department, in which case the Department may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to the Department with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Purchase Order quantity, or (3) terminate the Purchase Order or any contract under which the Purchase Order is issued in whole or in part.

Section 7. Subcontractors and Assignments.

A. Subcontractors.

The Contractor will not subcontract any work under the Purchase Order without prior written consent of the Department. The Contractor is fully responsible for completion of all its subcontracted work in accordance with the Purchase Order. The Department supports diversity in its procurements and contracts, and requests that Contractor offer subcontracting opportunities to certified woman-, veteran-, and minority-owned small businesses. The Contractor may contact the Office of Supplier Diversity at osdhelp@dms.myflorida.com for information on certified small business enterprises available for subcontracting opportunities.

B. Assignment.

The Contractor will not sell, assign or transfer any of its rights, duties or obligations under the Purchase Order without the prior written consent of the Department. However, the Contractor may waive its right to receive payment and assign same upon notice to the Department. In the event of any assignment, the Contractor remains responsible for performance of the Purchase Order, unless such responsibility is expressly waived by the Department. The Department may assign the Purchase Order with prior written notice to the Contractor.

Section 8. RESPECT and PRIDE.

A. RESPECT.

In accordance with subsection 413.036(3), F.S., if a product or service required for the performance of the Purchase Order is on the procurement list established pursuant to subsection 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 PURCHASE ORDER SHALL BE PURCHASED FROM A NONPROFIT AGENCY FOR THE BLIND OR FOR THE SEVERELY HANDICAPPED THAT IS QUALIFIED PURSUANT TO CHAPTER 413, FLORIDA STATUTES, IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 413.036(1) AND (2), FLORIDA STATUTES; AND FOR PURPOSES OF THIS PURCHASE ORDER THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS PURCHASE ORDER 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.

B. PRIDE.

In accordance with subsection 946.515(6), F.S., if a product or service required for the performance of the Purchase Order is certified by or is available from Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) and has been approved in accordance with subsection 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 PURCHASE ORDER 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 PURCHASE ORDER THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS PURCHASE ORDER SHALL BE DEEMED TO BE SUBSTITUTED FOR THIS STATE AGENCY INSOFAR AS DEALINGS WITH SUCH CORPORATION ARE CONCERNED.

Additional information about PRIDE and the products it offers is available at http://www.pride-enterprises.org.

Section 9. Miscellaneous.

A. Independent Contractor.

The Contractor and its employees, agents, representatives, and subcontractors are not employees or agents of the Department and are not entitled to the benefits of State of Florida employees. The Department shall not be bound by any acts or conduct of the Contractor or its employees, agents, representatives, or subcontractors. The Contractor agrees to include this provision in all of its subcontracts under the Purchase Order.

B. Dispute Resolution, Governing Law and Venue.

Any dispute concerning performance of the Purchase Order shall be decided by the Department's designated Contract Manager, who will reduce the decision to writing and serve a copy on the Contractor. The decision of the Contract Manager shall be final and conclusive. Exhaustion of this administrative remedy is an absolute condition precedent to the Contractor's ability to pursue legal action related to the Purchase Order or any other form of dispute resolution. The laws of the State of Florida shall govern the Purchase Order. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to the Purchase Order. Further, the Contractor hereby waives all privileges and rights relating to venue it may have under Chapter 47, F.S., and any and all such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those based on convenience. The Contractor hereby submits to venue in the county chosen by the Department.

C. Waiver.

The delay or failure by the Department to exercise or enforce any of its rights under the Purchase Order shall not constitute waiver of such rights.

D. Modification and Severability.

The Purchase Order may only be modified by a written change order agreed to by the Department and the Contractor. Should a court determine any provision of the Purchase Order is invalid, the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Purchase Order did not contain the provision held to be invalid.

E. Time is of the Essence.

Time is of the essence for each and every obligation of the Contractor. Each such obligation is deemed material, and a breach of any such obligation (including a breach resulting from untimely performance) is a material breach.

F. Background Check.

The Department may require the Contractor and its employees, agents, representatives and subcontractors to provide fingerprints and be subject to such background check as directed by the Department. The cost of the background checks will be borne by the Contractor. The Department may require the Contractor to exclude the Contractor's employees, agents, representatives or subcontractors based on the background check results. In addition, the Contractor must ensure that all persons have a responsibility to self-report to the Contractor within three (3) calendar days any arrest for any disqualifying offense. The Contractor must notify the Contract Manager within twenty-four (24) hours of all details concerning any reported arrest. The Contractor will ensure that all background screening will be refreshed upon the request of the Department for each person during the term of the Purchase Order and any contract under which the Purchase Order is issued.

G. Disqualifying Offenses.

If at any time it is determined that a person has been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of guilty or nolo contendere, regardless of whether adjudication was withheld, within the last six (6) years from the date of the court's determination for the crimes listed below, or their equivalent in any jurisdiction, the Contractor is required to immediately remove that person from any position with access to State of Florida data or directly performing services under the Purchase Order. The disqualifying offenses includes all offences listed under Section 435.04(2), F.S. and the following:

(a) Computer related crimes

(b) Information technology crimes;

(c) Fraudulent practices;

(d) False pretenses;

(e) Frauds;

(f) Credit card crimes;

(g) Forgery;

(h) Counterfeiting;

(i) Violations involving checks or drafts;

(j) Misuse of medical or personnel records; and

(k) Felony theft.

H. E-Verify.

In accordance with Executive Order 11-116, the Contractor agrees to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of the Purchase Order for the services specified in the Purchase Order. The Contractor must also include a requirement in subcontracts that the subcontractor must utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term. In order to implement this provision, the Contractor must provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five (5) calendar days of Purchase Order execution. If the Contractor is not enrolled in DHS E-Verify System, it will do so within five (5) calendar days of notice of award, and provide the Contract Manager a copy of its MOU within five (5) calendar days of Contract execution. The link to E-Verify is https://www.uscis.gov/e-verify. Upon each Contractor or subcontractor new hire, the Contractor must provide a statement within five (5) calendar days to the Contract Manager identifying the new hire with its E-Verify case number.

I. Commodities Logistics.

The following provisions shall apply to all shipments unless otherwise indicated in the Purchase Order documents:

(a) All shipments are F.O.B. (free on board) destination, transportation charges prepaid.

(b) Each shipment must be shipped to the address indicated on the face of the Purchase Order and marked to the attention of the individual identified, if any. Each shipment must be labeled plainly with the Purchase Order number and must show the gross, tare, and net weight. A complete packing list must accompany each shipment. This paragraph shall also apply to any third party who ships items on behalf of the Contractor.

(c) No extra charges shall be applied for boxing, crating, packing, or insurance.

(d) The following delivery schedule shall apply: 8:00 AM – 5:00 PM, Monday through Friday, excluding legal holidays.

(e) If delivery to the specified destination cannot be made on or before the specified date, notify the Department immediately using the contact information provided in the MyFloridaMarketPlace system.

(f) The Contractor assumes all liability for shipments shipped to other than the specified destination.

(g) Items received in excess of quantities specified may, at Department's option, be returned at the Contractor's expense. Substitutions are not permitted.

J. Warranties.

The Contractor represents and warrants that all aspects of any commodities provided or used by it are merchantable and shall at a minimum conform to the standards in the Contractor's industry. Further, the Contractor represents and warrants that any contractual services performed under the Purchase Order shall be performed in a workmanlike manner, consistent with the standards of care, skill and diligence in the Contractor's industry, trade, or profession. The warranties expressed in the Purchase Order are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the commodities and contractual services provided by the Contractor. Similarly, terms separately provided by the Contractor modify the Department's rights only to the extent those terms expand those rights. Acceptance by the Department shall not relieve the Contractor of its warranty or any other obligation under the Purchase Order.

The Contractor represents and warrants that all the concepts, materials, commodities, and contractual services produced, or provided to the Department pursuant to the terms of the Purchase Order shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. Contractor represents and warrants that title to any property assigned, conveyed or licensed to the Department is good and that transfer of title or license to the

Department is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.

The Contractor represents and warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its obligations under the Purchase Order. The Contractor warrants that neither it nor any affiliate is currently on the Suspended Vendor List, Convicted Vendor List or the Discriminatory Vendor List, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Department in writing if its ability to perform is compromised in any manner during the term of the Purchase Order.