

**CONTRACT BETWEEN**  
**FLORIDA DEPARTMENT OF MANAGEMENT SERVICES**  
**AND**  
**EMC Corporation**

This Contract is by and between the State of Florida, Department of Management Services (Department), an agency of the State of Florida with offices at 4050 Esplanade Way, Tallahassee, Florida 32399-0950, and EMC Corporation. (Contractor)

Whereas, the Contractor replied to the Department's Request for Proposal (RFP) No.: 12-991-268-H – IT Disaster Recovery Services;

Accordingly, and in consideration of the mutual promises contained in the Contract documents, the Department and the Contractor do hereby enter into this Contract.

**1.0 NAME OF PROJECT**

IT Disaster Recovery Services Contract number: 991-268-11-1

**2.0 SUMMARY OF THE CONTRACTUAL SERVICES (SCOPE OF WORK)**

See Section 6 of the RFP document. Additional information and requirements will be defined by the eligible users in a statement of work and attached to a PO/DO.

**3.0 DELIVERABLES**

See Section 6 of the RFP document. Additional information and requirements will be defined by the eligible users in a statement of work and attached to a PO/DO.

**4.0 SUMMARY OF PENALTY FOR FAILURE OF CONTRACTOR TO MEET DELIVERABLES**

Liquidated damages are not part of this contract; however, see Section 4 of the RFP document for information regarding contract termination rights.

**5.0 EFFECTIVE DATE**

This Contract shall begin on August 12, 2010 or on the last date in which it is signed by all parties, whichever is later.

**6.0 EXPIRATION DATE**

This Contract shall expire from the effective date of the Contract, unless cancelled earlier in accordance with its terms.

**7.0 RENEWAL**

Upon mutual written agreement, the Department and the Contractor may renew the Contract in accordance with section 287.057 (14)(a) pursuant to the provision of PUR 1000 Section 4.26 of the RFP document.

**8.0 INTELLECTUAL PROPERTY**

See Section 5.28 of the RFP document.

If Intellectual Property is created but is not specifically addressed within Section 5.28 of the RFP document, that intellectual property is subject to following provisions:

- A. Anything by whatsoever designation it may be known, that is produced by, or developed in connection with, this Contract shall become the exclusive property of the State of Florida and may be copyrighted, patented, or otherwise restricted as provided by Florida or federal law. Neither the Contractor nor any individual employed under this Contract shall have any proprietary interest in the product.
- B. With respect to each Deliverable that constitutes a work of authorship within the subject matter and scope of U.S. Copyright Law, 17 U.S.C. Sections 102-105, such work shall be a "work for hire" as defined in 17 U.S.C. Section 101 and all copyrights subsisting in such work for hire shall be owned exclusively by the Department pursuant to s. 1006.39, F.S., on behalf of the State of Florida.
- C. In the event it is determined as a matter of law that any such work is not a "work for hire", Contractor shall immediately assign to the Department all copyrights subsisting therein for the consideration set forth in the Contract and with no additional compensation.
- D. The foregoing shall not apply to any preexisting software, or other work of authorship used by Contractor, to create a Deliverable but which exists as a work independently of the Deliverable, unless the preexisting software or work was developed by Contractor pursuant to a previous Contract with the Department or a purchase by the Department under a State Term Contract.
- E. The Department shall have full and complete ownership of all software developed pursuant to the Contract including without limitation:
  - 1. The written source code;
  - 2. The source code files;
  - 3. The executable code;
  - 4. The executable code files;
  - 5. The data dictionary;
  - 6. The data flow diagram;
  - 7. The work flow diagram;
  - 8. The entity relationship diagram; and
  - 9. All other documentation needed to enable the Department to support, recreate, revise, repair, or otherwise make use of the software.

## 9.0 CONTRACT DOCUMENTS

This Contract, together with the following attached documents, set forth the entire understanding of the parties with respect to the subject matter. In case of conflict, the terms of this Contract shall control. If a conflict exists among any of the attached documents, the documents shall have priority in the order listed:

- A. **ATTACHMENT I: (the solicitation document – amendments thereto take precedence):**  
RFP No.: 12-991-268-H, as amended
- B. **ATTACHMENT II:**  
Contractor's Response to the RFP.

## 10.0 PREFERRED PRICE

The Contractor agrees to submit to Customer at least annually an affidavit from an authorized representative attesting that the Contractor is in compliance with the preferred pricing provision in Section 4(b) of form PUR 1000.

**11.0 CONTRACT MANAGEMENT**

**A. Contract Manager**

The Department employee who is primarily responsible for overseeing the Contractor’s performance of its duties and obligations pursuant to the terms of this Contract. The Contract Manager shall be as follows:

Lori Potts, Purchasing Analyst, Team Lead  
Division of State Purchasing  
Department of Management Services  
4050 Esplanade Way, Suite 360  
Tallahassee, FL 32399-0950  
Telephone: (850) 487-4196  
Fax: (850) 414-6122  
E-mail: [Lori.Potts@dms.myflorida.com](mailto:Lori.Potts@dms.myflorida.com)

The Department may appoint a different Contract Manager, which shall not constitute an amendment to the Contract, by sending written notice to Contractor. Any communication to the Department relating to the Contract shall be addressed to the Contract Manager.

**B. Contractor’s Representative**

Michael Briggs, Enterprise Account Manager  
EMC Corporation.  
160 Hunters Trace  
Crawfordville, FL 32327  
Telephone: Office 850-925-4783 Cell 850-210-4780  
Fax: 678-475-9462  
E-mail: [briggs\\_michael@emc.com](mailto:briggs_michael@emc.com)

**State of Florida  
Department of Management Services**

**Approved as to form and legality  
by the Department General Counsel’s Office**

\_\_\_\_\_  
**By: Linda H. South, Secretary**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

**Contractor:  
[EMC Corporation]**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Date**

**11.0 CONTRACT MANAGEMENT**

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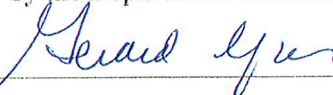
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State of Florida  
Department of Management Services

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By: Linda H. South, Secretary



Date

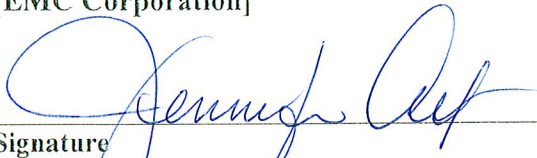
8/9/10

Date

7/22/10

Contractor:  
[EMC Corporation]

Signature



Print Name

Jennifer Axt

Date

8/5/10

**VENDOR AFFIDAVIT**

**Regarding the Contract Between  
Awarded Vendor (the "Contractor")  
and  
The Florida Department of Management Services  
Contract No.: 991-268-11-1 (the "Contract")**

Pursuant to section 10 of the Contract, the undersigned Contractor hereby attests that the Contractor is in compliance with the preferred-pricing clause contained in the Contract.

PRINT CONTRACTOR NAME: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature of Authorized Representative

Print Representative's Name/Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, by  
\_\_\_\_\_.

\_\_\_\_\_  
Signature of Notary

(Print, Type, or Stamp Commissioned Name of Notary Public)

[Check One] \_\_\_\_ Personally Known OR \_\_\_\_ Produced the following I.D. \_\_\_\_\_

<i>VENDOR NAME</i> _____	<i>FEIN.:</i> _____
<i>VENDOR'S AUTHORIZED REPRESENTATIVE NAME AND TITLE</i>	
_____	
<i>ADDRESS</i> _____	
<i>CITY, STATE, ZIP</i> _____	
<i>PHONE NUMBER</i> _____	
<i>EMAIL ADDRESS</i> _____	

**Contract Manager:**

Lori Potts, Purchasing Analyst, Team Lead

4050 Esplanade Way

Suite 360

Tallahassee, FL 32399-0950

850-487-4196

[Lori.Potts@dms.myflorida.com](mailto:Lori.Potts@dms.myflorida.com)

**Notice:**

The following “Complete Contract Document” has been modified to reflect all pertinent addendums issued during the solicitation.

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## **Section 1.0**

### **Introduction**

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1.3 Product and Service Offerings

1.4 Contact Information

1.5 Event Timeline

## **1.1 Background**

The State of Florida, Department of Management Services, Division of State Purchasing provides centralized statewide contracts for hardware, software and other commodities and services for use by all state agencies, political sub-divisions (such as municipalities, cities, towns, schools, universities, etc.) and others authorized by law to use state contracts. Due to the diversity of the State's requirements and the changes in the available technology to accomplish "Disaster Recovery Services," the Division of State Purchasing seeks to establish a new state term contract that enables end users to seek a wide range of alternatives that meet the needs of all Eligible Users.

The contract resulting from this solicitation, if any, is intended to replace State Term Contract # 345-200-07-1, when it expires on February 1, 2011, and will provide efficiency and economy for state agencies and other eligible users by providing a product/services and price schedule from one or more IT disaster recovery service providers. The resultant contract, if any, may be a multiple award; however, the State reserves the right to award the entire contract, to a single Contractor. This RFP and subsequent contract, does not guarantee any level of business to the awarded supplier(s).

A non-mandatory vendor bid conference will be held as noted in the Event Timeline in Section 1.5. The State will use this opportunity to address general questions related to the submittal process. Technical questions may be asked during the scheduled meeting; however any questions related to specifications or requirements of the solicitation must be addressed through the question and answer process provided within the MyFloridaMarketPlace Sourcing tool system in order to receive an official response.

The awarded supplier(s) will receive Direct Orders (DO), Purchase Orders (PO) or credit card orders (P-Card) directly from the Customer. Specific Statement(s) of Work will be provided by the Customer in accordance with Section 6 of the RFP.

This solicitation includes the following Commodity Codes (description is to the right) and components thereof:

- 345-200 Disaster Recovery Support Materials, Hurricane Kits, etc.
- 991-268 Disaster Communication & Data Recovery Services
- 974-247 Data Security Services

## **1.2 Purpose / Term**

The State of Florida, Department of Management Services, Division of State Purchasing, invites interested Bidders to submit proposals in accordance with these solicitation documents. The purpose of this solicitation is to establish a five-year (60 month) State Term Contract with the option for renewals in accordance with section 287.057 (14)(a.), Florida Statutes (F. S.), for the purchase of IT Disaster Recovery Services. The contract term is anticipated to begin on or about July 5, 2010. This contract will run in parallel with the existing State Term Contract (345-200-07-1, which will expire on 2/1/2011) to allow for required testing and a seamless transition to selected new technology/services.

The State's MyFloridaMarketPlace e-Procurement system (the "System") will be used to conduct this competitive event.

## **1.3 Product and Service Offerings**

Products available under this Contract are set forth in Section 5 of this solicitation. These offerings may be updated during the Contract term to incorporate new Product and Service offerings, price revisions, and to discontinue items no longer offered by Contractor. Offering updates must be submitted as outlined in Sections 5.18 and 5.19 of this solicitation.

**1.4 Contact Information**

**The primary contact for this solicitation is:**

Lori Potts  
 Purchasing Analyst, Team Lead  
 State Purchasing, Department of Management Services  
 4050 Esplanade Way, Suite 360  
 Tallahassee, FL 32399-0950  
 Office: (850) 487-4196 (850) 414-8331 (facsimile)  
[Lori.Potts@dms.myflorida.com](mailto:Lori.Potts@dms.myflorida.com)

**1.5 Event Timeline.**

Respondents should review and become familiar with the Event Timeline. The dates and times of each activity within the Timeline may be subject to change. It is the responsibility of the Respondent to check for any changes. All changes to the Timeline will be made through an addendum to this solicitation and posted within the Vendor Bid System ([http://vbs.dms.state.fl.us/vbs/main\\_menu](http://vbs.dms.state.fl.us/vbs/main_menu)) and MyFloridaMarketPlace ([http://dms.myflorida.com/business\\_operations/state\\_purchasing/myflorida\\_marketplace/mfmp\\_vendors/vendor\\_toolkit/mfmp\\_sourcing\\_solicitations](http://dms.myflorida.com/business_operations/state_purchasing/myflorida_marketplace/mfmp_vendors/vendor_toolkit/mfmp_sourcing_solicitations)) sourcing tool.

**Event Timeline**

<b>Event</b>	<b>Time (EDT)</b>	<b>Date</b>
RFP Release		April 7, 2010
Vendor Bid Conference – Non Mandatory 4075 Esplanade Way, Room 152 Tallahassee, FL 32399	1:30 – 2:30 PM	April 23, 2010
Optional MFMP Sourcing Training	2:00 PM	April 26, 2010
Deadline for Questions Submitted via the Q&A Board within MyFloridaMarketPlace	2:00 PM	April 28, 2010
Answers to Respondents Questions Posted		May 5, 2010
RFP Submission Deadline (via MFMP)	2:00 PM	May 12, 2010
Revised Submission Deadline (via mail)	NOON	May 20, 2010
Revised Evaluation Period		May 20 – July 14, 2010
Formal Vendor Presentations		July 6 - 9, 2010
Recommendation to Award Public Meeting (Non-mandatory) 4050 Esplanade Way, Suite 101 Tallahassee, FL 32399-0950	2:00 PM	July 15, 2010
Posting of Intent to Award		July 16, 2010
Contract Start Date		On or about August 9, 2010

**DO NOT RELY ON THE MYFLORIDAMARKETPLACE SOURCING TOOL'S TIME REMAINING CLOCK. THE OFFICIAL SOLICITATION CLOSING TIME SHALL BE AS REFLECTED IN SECTION 1.5, TIMELINE.** The response deadline(s) shall be as reflected in Section 1.5, Event Timeline, of this solicitation. The MyFloridaMarketPlace Sourcing Tool's time remaining clock is not the official submission date and time deadline, it is intended only to approximate the solicitation closing and may require periodic adjustments.

**The remainder of this page is intentionally left blank.**

**Section 2**  
**General Instructions to Respondents, State of Florida Form PUR 1001**

Please refer to Section 1.4 on the RFX info tab of this solicitation within the MyFloridaMarketPlace Sourcing Tool.

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- 2.18 Contract Overlap
- 2.19 Public Records
- 2.20 Protests
- 2.21 Limitation on Vendor Contact with Agency During Solicitation Period



**2.1. Definitions.** The definitions found in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

- (a) "Buyer" means the entity that has released the solicitation. The "Buyer" may also be the "Customer" as defined in the PUR 1000 if that entity meets the definition of both terms.
- (b) "Procurement Officer" means the Buyer's contracting personnel, as identified in the Introductory Materials.
- (c) "Respondent" means the entity that submits materials to the Buyer in accordance with these Instructions.
- (d) "Response" means the material submitted by the respondent in answering the solicitation.
- (e) "Timeline" means the list of critical dates and actions included in the Introductory Materials.

**2.2. General Instructions.**

Potential respondents to the solicitation are encouraged to carefully review all the materials contained herein and prepare responses accordingly.

**2.3. Electronic Submission of Responses.**

Respondents are required to submit responses electronically. For this purpose, all references herein to signatures, signing requirements, or other required acknowledgments hereby include electronic signature by means of clicking the "Submit Response" button (or other similar symbol or process) attached to or logically associated with the response created by the respondent within MyFloridaMarketPlace. The respondent agrees that the action of electronically submitting its response constitutes:

- an electronic signature on the response, generally,
- an electronic signature on any form or section specifically calling for a signature, and
- an affirmative agreement to any statement contained in the solicitation that requires a definite confirmation or acknowledgement.

**2.4. Terms and Conditions.**

All responses are subject to the terms of the following sections of this solicitation, which, in case of conflict, shall have the order of precedence listed:

- Technical Specifications,
- Special Conditions and Instructions,
- Instructions to Respondents (PUR 1001),
- General Conditions (PUR 1000), and
- Introductory Materials.

The Buyer objects to and shall not consider any additional terms or conditions submitted by a respondent, including any appearing in documents attached as part of a respondent's response. In submitting its response, a respondent agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, shall have no force or effect. Failure to comply with terms and conditions, including those specifying information that must be submitted with a response, shall be grounds for rejecting a response.

**2.5. Questions.**

Respondents shall address all questions regarding this solicitation to the Procurement Officer. Questions must be submitted via the Q&A Board within MyFloridaMarketPlace and must be RECEIVED NO LATER THAN the time and date reflected on the Timeline. Questions shall be answered in accordance with the Timeline. All questions submitted shall be published and answered

in a manner that all respondents will be able to view. Respondents shall not contact any other employee of the Buyer or the State for information with respect to this solicitation. Each respondent is responsible for monitoring the MyFloridaMarketPlace site for new or changing information. The Buyer shall not be bound by any verbal information or by any written information that is not contained within the solicitation documents or formally noticed and issued by the Buyer's contracting personnel. Questions to the Procurement Officer or to any Buyer personnel shall not constitute formal protest of the specifications or of the solicitation, a process addressed in paragraph 19 of these Instructions.

## **2.6. Conflict of Interest.**

This solicitation is subject to chapter 112 of the Florida Statutes. Respondents shall disclose with their response the name of any officer, director, employee or other agent who is also an employee of the State. Respondents shall also disclose the name of any State employee who owns, directly or indirectly, an interest of five percent (5%) or more in the respondent or its affiliates.

## **2.7. Convicted Vendors.**

A person or affiliate placed on the convicted vendor list following a conviction for a public entity crime is prohibited from doing any of the following for a period of 36 months from the date of being placed on the convicted vendor list:

- submitting a bid on a contract to provide any goods or services to a public entity;
- submitting a bid on a contract with a public entity for the construction or repair of a public building or public work;
- submitting bids on leases of real property to a public entity;
- being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and
- transacting business with any public entity in excess of the Category Two threshold amount (\$25,000) provided in section 287.017 of the Florida Statutes.

## **2.8. Discriminatory Vendors.**

An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not:

- submit a bid on a contract to provide any goods or services to a public entity;
- submit a bid on a contract with a public entity for the construction or repair of a public building or public work;
- submit bids on leases of real property to a public entity;
- be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with any public entity; or
- transact business with any public entity.

## **2.9. Respondent's Representation and Authorization.**

In submitting a response, each respondent understands, represents, and acknowledges the following (if the respondent cannot so certify to any of following, the respondent shall submit with its response a written explanation of why it cannot do so).

- The respondent is not currently under suspension or debarment by the State or any other governmental authority.
- To the best of the knowledge of the person signing the response, the respondent, its affiliates, subsidiaries, directors, officers, and employees are not currently under investigation by any governmental authority and have not in the last ten (10) years been convicted or found liable for

any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

- Respondent currently has no delinquent obligations to the State, including a claim by the State for liquidated damages under any other contract.
- The submission is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive response.
- The prices and amounts have been arrived at independently and without consultation, communication, or agreement with any other respondent or potential respondent; neither the prices nor amounts, actual or approximate, have been disclosed to any respondent or potential respondent, and they will not be disclosed before the solicitation opening.
- The respondent has fully informed the Buyer in writing of all convictions of the firm, its affiliates (as defined in section 287.133(1)(a) of the Florida Statutes), and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees who were convicted of contract crimes while in the employ of another company.
- Neither the respondent nor any person associated with it in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or position involving the administration of federal funds:
  - Has within the preceding three years been convicted of or had a civil judgment rendered against them or is presently indicted for or otherwise criminally or civilly charged for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
  - Has within a three-year period preceding this certification had one or more federal, state, or local government contracts terminated for cause or default.
- The product offered by the respondent will conform to the specifications without exception.
- The respondent has read and understands the Contract terms and conditions, and the submission is made in conformance with those terms and conditions.
- If an award is made to the respondent, the respondent agrees that it intends to be legally bound to the Contract that is formed with the State.
- The respondent has made a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the response, and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in the response.
- The respondent shall indemnify, defend, and hold harmless the Buyer and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the respondent's preparation of its bid.
- All information provided by, and representations made by, the respondent are material and important and will be relied upon by the Buyer in awarding the Contract. Any misstatement shall be treated as fraudulent concealment from the Buyer of the true facts relating to submission of the bid. A misrepresentation shall be punishable under law, including, but not limited to, Chapter 817 of the Florida Statutes.

## **2.10. Manufacturer's Name and Approved Equivalents.**

Unless otherwise specified, any manufacturers' names, trade names, brand names, information or catalog numbers listed in a specification are descriptive, not restrictive. With the Buyer's prior approval, the Contractor may provide any product that meets or exceeds the applicable specifications. The Contractor shall demonstrate comparability, including appropriate catalog materials, literature, specifications, test data, etc. The Buyer shall determine in its sole discretion whether a product is acceptable as an equivalent.

#### **2.11. Performance Qualifications.**

The Buyer reserves the right to investigate or inspect at any time whether the product, qualifications, or facilities offered by Respondent meet the Contract requirements. Respondent shall at all times during the Contract term remain responsive and responsible. In determining Respondent's responsibility as a vendor, the agency shall consider all information or evidence which is gathered or comes to the attention of the agency which demonstrates the Respondent's capability to fully satisfy the requirements of the solicitation and the contract.

Respondent must be prepared, if requested by the Buyer, to present evidence of experience, ability, and financial standing, as well as a statement as to plant, machinery, and capacity of the respondent for the production, distribution, and servicing of the product bid. If the Buyer determines that the conditions of the solicitation documents are not complied with, or that the product proposed to be furnished does not meet the specified requirements, or that the qualifications, financial standing, or facilities are not satisfactory, or that performance is untimely, the Buyer may reject the response or terminate the Contract. Respondent may be disqualified from receiving awards if respondent, or anyone in respondent's employment, has previously failed to perform satisfactorily in connection with public bidding or contracts. This paragraph shall not mean or imply that it is obligatory upon the Buyer to make an investigation either before or after award of the Contract, but should the Buyer elect to do so, respondent is not relieved from fulfilling all Contract requirements.

#### **2.12. Public Opening.**

Responses shall be opened on the date and at the location indicated on the Timeline. Respondents may, but are not required to, attend. The Buyer may choose not to announce prices or release other materials pursuant to s. 119.071(1)(b), Florida Statutes. Any person requiring a special accommodation because of a disability should contact the Procurement Officer at least five (5) workdays prior to the solicitation opening. If you are hearing or speech impaired, please contact the Buyer by using the Florida Relay Service at (800) 955-8771 (TDD).

#### **2.13. Electronic Posting of Notice of Intended Award.**

Based on the evaluation, on the date indicated on the Timeline the Buyer shall electronically post a notice of intended award at [http://fcv.state.fl.us/owa\\_vbs/owa/vbs\\_main\\_menu](http://fcv.state.fl.us/owa_vbs/owa/vbs_main_menu). If the notice of award is delayed, in lieu of posting the notice of intended award the Buyer shall post a notice of the delay and a revised date for posting the notice of intended award. Any person who is adversely affected by the decision shall file with the Buyer a notice of protest within 72 hours after the electronic posting. The Buyer shall not provide tabulations or notices of award by telephone.

#### **2.14. Firm Response.**

The Buyer may make an award within sixty (60) days after the date of the opening, during which period responses shall remain firm and shall not be withdrawn. If award is not made within sixty (60) days, the response shall remain firm until either the Buyer awards the Contract or the Buyer receives from the respondent written notice that the response is withdrawn. Any response that expresses a shorter duration may, in the Buyer's sole discretion, be accepted or rejected.

#### **2.15. Clarifications/Revisions.**

Before award, the Buyer reserves the right to seek clarifications or request any information deemed necessary for proper evaluation of submissions from all respondents deemed eligible for Contract award. Failure to provide requested information may result in rejection of the response.

**2.16. Minor Irregularities/Right to Reject.**

The Buyer reserves the right to accept or reject any and all bids, or separable portions thereof, and to waive any minor irregularity, technicality, or omission if the Buyer determines that doing so will serve the State's best interests. The Buyer may reject any response not submitted in the manner specified by the solicitation documents.

**2.17. Contract Formation.**

The Buyer shall issue a notice of award, if any, to successful respondent(s), however, no contract shall be formed between respondent and the Buyer until the Buyer signs the Contract. The Buyer shall not be liable for any costs incurred by a respondent in preparing or producing its response or for any work performed before the Contract is effective.

**2.18. Contract Overlap.**

Respondents shall identify any products covered by this solicitation that they are currently authorized to furnish under any state term contract. By entering into the Contract, a Contractor authorizes the Buyer to eliminate duplication between agreements in the manner the Buyer deems to be in its best interest.

**2.19. Public Records.**

Article 1, section 24, Florida Constitution, guarantees every person access to all public records, and Section 119.011, Florida Statutes, provides a broad definition of public record. As such, all responses to a competitive solicitation are public records unless exempt by law. Any respondent claiming that its response contains information that is exempt from the public records law shall clearly segregate and mark that information and provide the specific statutory citation for such exemption.

**2.20. Protests.**

Any protest concerning this solicitation shall be made in accordance with sections 120.57(3) and 287.042(2) of the Florida Statutes and chapter 28-110 of the Florida Administrative Code. Questions to the Procurement Officer shall not constitute formal notice of a protest. It is the Buyer's intent to ensure that specifications are written to obtain the best value for the State and that specifications are written to ensure competitiveness, fairness, necessity and reasonableness in the solicitation process.

**Section 120.57(3)(b), F.S. and Section 28-110.003, Fla. Admin. Code requires that a notice of protest of the solicitation documents shall be made within seventy-two hours after the posting of the solicitation.**

Section 120.57(3)(a), F.S. requires the following statement to be included in the solicitation: "Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes."

Section 28-110.005, Fla. Admin. Code requires the following statement to be included in the solicitation: "Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes."

**2.21. Limitation on Vendor Contact with Agency During Solicitation Period.**

Respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

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## Section 3.0

### Special Instructions To Respondents

**Special Instructions to respondents contained in this section may supersede or supplement general instructions to respondents contained in Section 2, (PUR 1001).**

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### 3.1 Additional Definitions.

The definitions found in rule 60A-1.001, F.A.C., shall apply to this agreement. The following additional terms are also defined:

- a) “**Authorized Dealer**” means an agent/reseller/dealer/subcontractor authorized by the Manufacturer, in writing, to provide products and/or services under the DIRECT SUPERVISION of the Manufacturer. The Contractor/Manufacturer is responsible for all liability, terms and conditions within the contract. If an agent is authorized to conduct business on behalf of the Manufacturer and the agent is to receive compensation from the Manufacturer for its services, then any dispute between the Manufacturer and the agent shall be resolved between the Manufacturer and the agent. The State of Florida is not a party to any agreement entered into between the Manufacturer and its agent(s).
- b) “**Department**” means the Florida Department of Management Services. The Department will be a party to the Contract. “State Purchasing,” a division within the Department’s Support Program, is responsible for administration of this solicitation and will be responsible for day-to-day administration of the Contract. State Purchasing may be reached at 4050 Esplanade Way, Suite 360, Tallahassee, FL 32399-0950, or via links posted at <http://www.myflorida.com/myflorida/business/index.html>.
- c) “**Disaster**” means any unplanned event or condition that renders the Eligible User unable to use a location for its intended computer processing and related purposes.
- d) “**Disaster Recovery**” means the process, policies and procedures related to preparing for recovery or continuation of technology infrastructure critical to an organization after a natural or human-induced disaster.
- e) “**Eligible Users**” as defined in 60A-1.005, F.A.C., means all governmental agencies, which have a physical presence within the State of Florida and any independent, nonprofit college or university that is located within the State of Florida and is accredited by the Southern Association of Colleges and Schools.
- f) “**Mandatory**” - The Terms “must”, “shall”, “will”, “is required,” identify a mandatory item or factor (as opposed to “desirable”). Failure to meet a mandatory item or factor MAY result in the rejection of the Respondent’s/bidder’s proposal.
- g) “**Manufacturer**” means the entity that holds the trademark in the identified brand name.
- h) “**Manufacturer’s Price List**” means the most recent document published by the Manufacturer that details products available, model numbers, options, and prices for each.



- i) **“Operating Software”** means those routines, whether or not identified as program products that reside in the equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
- j) **“Responsible Bidder”** means a bidder who has the capability in all respects to perform fully the contract requirements, and the experience, integrity, perseverance, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.
- k) **“Responsive Bidder”** or **“Responsive Proposal”** means an offer or proposal that conforms in all material respects to the requirements set forth in the Request for Proposal. Material respects of a Request for Proposal include, but are not limited to price, quality, quantity, or delivery requirements.
- l) **“Site License”** the term “Site License” shall mean the license established upon acquisition of the applicable number of copies of such product and payment of the applicable license fees as set forth in the Statement of Work.
- m) **“Software”** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.
- n) **“Software Failure”** means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly.
- o) **“State”** means the State of Florida and its agencies.

### 3.2 **Order of Events.**

Respondents will review and become familiar with the Event Timeline and solicitation documents, enter any questions in the MFMP Sourcing Tool Q&A Board before the date and time specified in the Event Timeline, answer all questions requested for the proposal, submit required documents, develop cost savings structures for the products and services proposed, and upload final responses into the MFMP Sourcing Tool.

The Event Timeline gives the date and time (where applicable) for major activities in the solicitation. See Section 1.5 of this solicitation document for the Event Timeline.

### 3.3 **Order of Precedence**

Potential respondents to the solicitation are encouraged to carefully review all the materials contained herein and prepare responses accordingly. In the event any conflict exists between the Special and General Instructions, those instructions specified in the Special Instructions shall prevail.

All responses are subject to the terms of the following sections of this RFP, which, in case of conflict, shall have the order of precedence listed:

- Introduction, Section 1
- Technical Specifications, Section 6

- Special Instructions to Respondents, Section 3
- Special Contract Conditions, Section 5.0
- General Instruction to Respondents (PUR 1001), Section 2
- General Contract Conditions (PUR 1000), Section 4
- Price Sheets, Section 7
- Other Forms, Attachments and Worksheets, Section 7

### **3.4 Who May Respond**

The Department will accept responses from responsive and responsible Respondents that are in good standing with the State of Florida, meet product and services specifications and possess the financial capability, experience, and personnel resources to provide equipment and services of the scope and breadth described within this Request for Proposal. Respondents must meet all requirements including, but not limited to, the following:

- Respondent must be the primary service provider offering IT Disaster Recovery Products and Services or a single authorized reseller offering products and services on behalf of the primary company.
- Respondents may provide a wide variety of IT Disaster Recovery Services throughout the State of Florida in order to meet the varying needs of the State's Eligible Users. Service provided may cover the needs of single entity, multiple agencies, large data centers, or multiple data centers offering available services to State of Florida Eligible Users.
- Respondents must be a registered vendor in the MyFloridaMarketPlace (MFMP) Vendor Registration system to do business with the State of Florida. If you are not already a registered vendor, you may view registration information as well as other pertinent information at:  
[http://dms.myflorida.com/business\\_operations/state\\_purchasing/myflorida\\_marketplace/vendors/vendor\\_toolkit/mfmp\\_vendor\\_registration](http://dms.myflorida.com/business_operations/state_purchasing/myflorida_marketplace/vendors/vendor_toolkit/mfmp_vendor_registration)
- Respondents must be registered with the Florida Department of State - Division of Corporations. To check your registration or to register with the Division of Corporations, please go to: [www.sunbiz.org](http://www.sunbiz.org).
- Only Respondents that are capable of Electronic Invoicing through MyFloridaMarketPlace may respond to this solicitation. See Section 7.10 to view the MyFloridaMarketPlace Electronic Invoicing Requirements.
- Respondents must be current with all MyFloridaMarketPlace (MFMP) transaction fees per Section 287.057(23), Florida Statutes, and 60A-1, Florida Administrative Code (F.A.C.).

### **3.5 MyFloridaMarketPlace (MFMP) RFP Overview**

MyFloridaMarketPlace is the State of Florida's online eProcurement system for buyers and vendors. In operation for more than five years, the system streamlines interactions between vendors and state government entities, is a source for centralized procurement activities, and provides the tools to support world-class procurement for the State of Florida.

### **3.6 The MFMP Sourcing Tool**

This solicitation will be conducted using the MyFloridaMarketPlace Sourcing Tool (“Sourcing Tool”). Training materials can be found at:

[http://marketplace.myflorida.com/vendor/vendor\\_solicitation\\_help.htm](http://marketplace.myflorida.com/vendor/vendor_solicitation_help.htm).

Download and review the document titled RFP Event User Guide.

- a. For all technical questions about the Sourcing Tool, vendors should contact the MyFloridaMarketPlace Customer Service Desk at (866) FLA-EPRO or [vendorhelp@myfloridamarketplace.com](mailto:vendorhelp@myfloridamarketplace.com).
- b. For additional information / assistance on using the Sourcing Tool, please visit the MyFloridaMarketPlace website at following link:  
[https://marketplace.myflorida.com/vendor/vendor\\_solicitation\\_help.htm](https://marketplace.myflorida.com/vendor/vendor_solicitation_help.htm).

This site includes:

1. Solicitation User Guides
2. OnDemand web-based Sourcing Tool training link
3. WinZip FAQs
4. Vendor FAQs

### 3.6.1 Optional MFMP Sourcing Tool Training

An optional conference call training session on how to use the MyFloridaMarketPlace Sourcing Tool for this RFP is scheduled on the date indicated on the Event Timeline at 2:00PM ET. The Conference Call number is **(888) 808-6959**. Conference Code is **3943298**.

Please go to:

[http://marketplace.myflorida.com/vendor/vendor\\_solicitation/rfp\\_event\\_user\\_guide.pps](http://marketplace.myflorida.com/vendor/vendor_solicitation/rfp_event_user_guide.pps).

Please have this document open on your desktop while participating on the call. To participate in the conference call, please call in to the number provided approximately 1 minute before the scheduled time.

### 3.6.2 On-Demand Training

On-Demand is a web-based interactive training application available to all respondents to assist in learning how to respond to an event using the MyFloridaMarketPlace sourcing tool. The link is <http://training.myfloridamarketplace.com/vendor/toc.html> click on Responding to Sourcing Event.

## 3.7 Sourcing Tool Tips

When working in the Sourcing Tool, be aware of the twenty (20) minute time-out function (with a two (2) minute warning) in the tool. This means that you should save your work (click the SAVE button) at intervals of less than twenty minutes to ensure your entries (since last saved) are not lost.

Please note that clicking the SAVE button within the Sourcing Tool only saves your bid responses. The SAVE button **does not transmit your bid response to the State**. In order to transmit your bid response to the State, you must click the **SUBMIT** button on the SUMMARY page of the bid response.

After clicking the SUBMIT button, it is the **Respondent's** responsibility to check submitted bid response within the Sourcing Tool to verify that the response is accurately and completely captured within the Sourcing Tool. Respondents must do this while there is time remaining in the response period in case you discover an error and need to submit a revised bid response.

To validate your bid response, you should do the following before the bidding period ends:

- a. Go to the “My Bids / My Responses” tab within Sourcing Tool after you submitted your bid response
- b. Click on the Bid ID number of your last submitted bid response
- c. Review entire bid response to make sure all responses are complete, accurate and as you intended to submit.

Minimum areas to check are:

- ✓ Text boxes – Is your entire answer viewable?
- ✓ Yes/No questions – Is the displayed answer correct?
- ✓ All uploaded document files / scanned documents – Can you open attached document and clearly view entire content?
- ✓ Offline electronic backup copy sent to the State (if applicable) - Can you open attached document and clearly view entire content? Does content of this file match your bid response within the tool (e.g., not an earlier version or working copy)?
- ✓ Pricing Information – Are all prices you intended to submit visible and accurately captured within Sourcing Tool?

**It is strongly recommended THAT YOU submit your bid as early as possible. You should allow time to receive any requested assistance and to receive verification of your submittal; waiting until the last hours of the solicitation could impact the timely submittal of your bid.**

**DO NOT RELY ON THE “MYFLORIDAMARKETPLACE” SOURCING TOOL’S TIME REMAINING CLOCK. THE OFFICIAL SOLICITATION CLOSING TIME SHALL BE AS REFLECTED IN THE TIMELINE (Section 1.5) Of THIS RFP.**

The MyFloridaMarketPlace (MFMP) Sourcing Tool’s time remaining clock is NOT the official submission date and time deadline, it is intended only to approximate the solicitation closing and may require periodic adjustments

### **3.8 Email Notification**

Respondents are reminded that the Sourcing Tool’s email notifications are an option provided to respondents as a courtesy. The State of Florida is not under any obligation to provide, and does not guarantee that respondents will receive, email notifications concerning any posting, amendment or close of solicitations (RFPs).

**Vendors are responsible to check the Sourcing Tool and / or the Vendor Bid System for information and updates concerning solicitations.**

### **3.9 Submittal of Response**

Respondents shall view and download the documents in the MFMP Sourcing Tool ([http://dms.myflorida.com/egovernment\\_tools/myflorida\\_marketplace](http://dms.myflorida.com/egovernment_tools/myflorida_marketplace)). Each Respondent is responsible for ensuring that its response and all associated documents are submitted before the proper date and time. In the event a Respondent submits more than one response, only the last response received prior to the response deadline specified in Section 1.5 shall be considered for award. Other responses will not be opened. Offers not submitted as indicated in this section shall be rejected.

The Department shall not consider late responses and the MyFloridaMarketPlace Sourcing Tool will NOT accept responses after the due date and time specified in the Event Timeline, or as amended by the Department. **RESPONSES MUST BE SUBMITTED IN THE MYFLORIDAMARKETPLACE SOURCING TOOL BEFORE THE DATE AND TIME SPECIFIED IN THE EVENT TIMELINE.**

Failure to provide all requested information within the response package before the response deadline specified in Section 1.5 may result in rejection of the response.

**DO NOT RELY ON THE MFMP SOURCING TOOL'S TIME-REMAINING CLOCK.** The official response deadline shall be as reflected in Section 1.5, Timeline, of this solicitation. The MFMP Sourcing Tool's time-remaining clock is intended only to approximate the solicitation closing, and may require periodic adjustments.

### **3.10 Response Format / Instructions**

Respondent shall provide a separate and clearly identified response, which shall include:

- Cover letter and Table of Contents.
- Profile: Describe your organization and general background. Include information on your organization's size, recent sales history, service philosophy, and complaint resolution process.
- History and Experience: Provide years of experience in the IT Disaster Recovery Services industry (nationally and/or in Florida). Provide number of years servicing the public sector.
- Address any requirements and/or questions noted within Sections 3, 5, and 6 of the RFP.
- Specifically address the Questions for Vendors noted in Section 6.3 and attached in Section 7.
- Provide all completed forms, reports, documents, spreadsheets, and attachments noted as mandatory in Section 7 of the RFP or required elsewhere within the RFP.
- Provide a product and service listing that will meet the needs addressed in this RFP.
- Provide pricing information for all products and services proposed using the price sheets located in Section 7.
- Provide product documentation or other information that is pertinent to the types of products and services proposed.
- Other: Provide any other information as needed.

### **3.11 Estimated Sales**

The state has identified current annual state agency and other eligible user annual spend in the amount of \$6.4 million on IT Disaster Recovery Services, which includes both in-house and out-sourced services. The State believes that the potential for additional sales is actually much higher; however, Respondents are reminded that these figures do not represent any guarantee on the number of orders or continued spend by the agencies or eligible users. This figure is given only as a guideline for preparing your response and should not be construed as representing actual commitment figures under the contract.

### **3.12 Addenda to the RFP Documents**

THE DEPARTMENT RESERVES THE RIGHT TO ISSUE ADDENDA TO THIS RFP. NOTICE OF ANY ADDENDA WILL BE POSTED WITHIN THE MFMP SOURCING TOOL AND THE VBS SYSTEM. SUCH NOTICE, IF REQUIRED, WILL CONTAIN THE APPROPRIATE DETAILS FOR IDENTIFYING AND/OR

REVIEWING THE FORMAL CHANGES TO THIS RFP. EACH RESPONDENT IS RESPONSIBLE FOR MONITORING THE SITES FOR NEW OR CHANGING INFORMATION CONCERNING THIS RFP.

**3.13 Initial Determination of Responsiveness**

The Department shall evaluate eligible (“responsible and responsive”) responses. Responses that do not meet the minimum requirements of this solicitation; or fail to provide all required information, documents, or materials may be rejected as non-responsive. Respondents whose responses, past performance, or current status with the State that do not reflect the capability, integrity or reliability to fully, and in good faith, perform the requirements of the Contract, may be rejected. The Department reserves the right to determine which responses meet the requirements of this solicitation, and which Respondents are responsive and responsible. **This paragraph is in addition to, and shall not be construed to limit or override, any right or remedy available to the Department in, Section 2, PUR 1001, or Section 4, PUR 1000.**

Failure to comply with each of the requirements listed below may result in the response being deemed non-responsive and therefore may not receive further consideration in this RFP process. This includes, but is not limited to the following:

Initial Responsiveness Checklist	
1.	Did the Respondent submit its reply <u>before</u> the indicated deadline?
2.	Did the Respondent submit a detailed pricing structure indicating the minimum percentage discount?
3.	Did the Respondent submit a Supplier Qualifier Report (SQR) from Dun & Bradstreet (D&B)? (See Section 3.14.)
4.	Has the Respondent met the requirement for having no Conflicts of Interest? (See PUR 1001, (Section 2.6)
5.	Does the Respondent comply with the requirement for not being placed on the Convicted Vendor list for committing a public entity crime within the last 36 months? (See Section 2.7)
6.	Does the Respondent comply with the requirement for not being placed on the Discriminatory Vendor List per Section 287.134, F.S.? (See Section 2.8.)
7.	Is the Respondent on the Suspended Vendor List?
8.	Does the Respondent have any open Complaints to Vendor? (DMS will determine if open complaints would prevent a vendor from being considered.)
9.	Did the Respondent submit all forms, reports, or documents identified within the solicitation as required, any questions identified that require a vendor response, and product and pricing information?
10.	Is the Respondent a registered vendor in the MFMP Vendor Registration System?
11.	Is the Respondent properly registered with the Department of State, Division of Corporations?

**3.14 Evaluation and Selection Process**

Evaluation will consist of the review and assessment of the Respondents’ submittals. Top-scoring Respondents will be invited to participate in Stage 2 of the evaluation process, which will be a formal presentation to the evaluation committee. (See Section 3.16)

All areas of evaluation listed in the table below are to be addressed by the Respondent in its submittal.

Proposals that are substantially incomplete or lack key information may be rejected as non-responsive. Responses should be concise, summarizing the Respondent’s pertinent experience and capabilities. Emphasis should be placed on completeness and clarity. Responses that do not provide sufficient content or satisfactory information, as requested in this RFP document, may receive lower scores. Points will be assigned to all categories (see table below for point-allocation per category) and then totaled in order to determine each Respondent’s ranking:

Evaluation Category	Maximum Possible Pts.
Vendor Responsiveness	Pass/Fail
Vendor Responsibility	Pass/Fail
Section 2 PUR 1001	Agree/Disagree
Section 3 – Financials	<b>24</b>
Section 4 – PUR 1000	Agree/Disagree
Section 5 – References, Purchase Orders, & Environmental	<b>49</b>
Section 6 – Technical Specifications	<b>145</b>
Section 7 – Pricing Models and discounts proposed	<b>260</b>
Section 7 – Vendor Responsibility Questionnaire	Pass/Fail
Questions to Vendors	<b>320</b>
<b>Total Points Possible:</b>	<b>798 pts.</b>

Except for Cost Information, all evaluation categories will be scored with each response having the opportunity to achieve the maximum total point allocation indicated.

Financials (Supplier Qualifier Report):

Each Respondent is required to provide information regarding its “Financial and Industry Standing and Strength” in order to demonstrate that it is financially stable, in good standing with creditors and manufacturers, and has the resources necessary to perform the services outlined in this RFP on a state-wide basis. The State requires each Respondent to provide a Supplier Qualifier Report (SQR) prepared by Dun & Bradstreet (D&B), in accordance with the instructions below. The SQR is a standard report that details financial and operational capabilities. This report must be submitted to the Department **prior to the proposal opening date and time**. Each Respondent will be responsible for the cost and timely submission of this report. Each Respondent will be assigned points during the evaluation phase of the solicitation based on the D&B score.

- If your company is not eligible for a Dun and Bradstreet report (privately held), please include financial statements for the last three years, in accordance with Generally Accepted Accounting Principles.

The prospective Contractor will request the SQR from D&B at:

<https://sor.dnb.com/sor/jsp/forms/SOF.jsp?SORTAG1=JQ37hS4r&SORTAG2=j58Gjk4x>

- Enter the RFP number in the text field entitled “Enter your RFP Number” and select “Submit.”
- Enter your company’s Dun Number. (If you don’t know your company’s Dun number, you may use the search feature to find it.)
- Confirm Registration
- Enter payment method and information and complete registration. The cost of the preparation of the D&B report shall be the responsibility of the Respondent.

Respondents are advised to allow a minimum of ten (10) business days for D&B to process a report request. If the Department does not receive an SQR from D&B prior to the opening date and time of the solicitation but one is submitted as part of a Respondent’s Response, the Respondent shall be required to demonstrate that it requested the SQR after the posting date of the RFP and that the SQR was requested for this particular solicitation. Once the process is complete, a copy of the report will be provided to the Department and an identical report will be sent to the Respondent. If the Department does not receive a report or cannot determine on the face of the document that the SQR is that of the proposing entity, then the Department will instruct the Evaluation Team to award zero points to that company for that evaluation category. It is the responsibility of the Respondent to ensure the timely submission of a D&B report to the Department prior to the opening date of the proposals. The Department will use the financial scoring scale below when evaluating and scoring the financial viability of the prospective Contractors.

Financial Scoring Scale:

SQR Risk Score		Points Assigned
1	Lowest Risk Rating	24.0
2		21.0
3		18.0
4		15.0
5		12.0
6		9.0
7	↓	6.0
8		3.0
9	Highest Risk Rating	0.0

**3.15 Electronic Posting of Ranking of Respondents.**

Offers shall be opened on the date and time indicated on the Event Timeline (“Timeline”), and thereafter evaluated. Prices will not be read, pursuant to Section 119.071(1)(b) and (2)(a) of the Florida Statutes. After evaluating the responses, on the date indicated on the Timeline, the Department shall electronically post the rankings in the MFMP Sourcing Tool.

*AFTER THE EVALUATION IS COMPLETED, ON THE DATE INDICATED ON THE TIMELINE, THE DEPARTMENT SHALL ELECTRONICALLY POST A NOTICE OF INTENT TO AWARD. IF THE RANKING OR AWARD IS DELAYED, IN LIEU OF POSTING IT ON THE DATE INDICATED ON THE TIMELINE, THE DEPARTMENT SHALL POST A NOTICE OF THE DELAY AND A REVISED DATE FOR POSTING THE RANKING OR NOTICE OF INTENT TO AWARD. ANY PERSON WHO IS ADVERSELY AFFECTED BY THE DECISION SHALL FILE WITH THE DEPARTMENT A NOTICE OF PROTEST WITHIN 72 HOURS AFTER THE ELECTRONIC*



*POSTING (SEE SECTION 2.20 OF THE GENERAL INSTRUCTIONS (PUR 1001) FOR MORE INFORMATION ON PROTESTS). THE DEPARTMENT SHALL NOT PROVIDE REPLY RANKINGS OR NOTICES OF AWARD BY TELEPHONE.*

**3.16 Vendor Presentations.**

Vendors will be asked to make formal presentations. These presentations will be used to provide the evaluation team with a clearer understanding of the vendor's proposal. Vendors will not be awarded any points for the presentation; however, the presentations will be used to determine the overall ability of the vendor to meet contract technical requirements.

**3.17 Contract Award.**

After the formal presentations have been conducted, the Department may award the Contract to one or more top scoring Respondents whose product(s) and services the Department determines will provide the best value to the State.

**3.18 State Objectives.**

Within thirty (30) calendar days following award of the Contract, the successful Respondent shall submit plans addressing each of the State's five (5) objectives listed below, to the extent applicable to the items / services covered by this solicitation.

**3.18.1 Diversity.**

The State of Florida is committed to supporting its diverse business industry and population through ensuring participation by minority-, women-, and service-disabled veteran business enterprises in the economic life of the state. The State of Florida Mentor Protégé Program connects minority-, women-, and service-disabled veteran business enterprises with private corporations for business development mentoring. We strongly encourage firms doing business with the State of Florida to consider this initiative. For more information on the Mentor Protégé Program, please contact the Office of Supplier Diversity at (850) 487-0915.

The state is dedicated to fostering the continued development and economic growth of small, minority-, women-, and service-disabled veteran business enterprises. Participation by a diverse group of Vendors doing business with the state is central to this effort. To this end, it is vital that small, minority-, women-, and service-disabled veteran business enterprises participate in the state's procurement process as both Contractors and sub- contractors in this solicitation. Small, minority-, women-, and service-disabled veteran business enterprises are strongly encouraged to contribute to this solicitation.

The Contractor shall submit documentation addressing diversity and describing the efforts being made to encourage the participation of small, minority-, women-, and service-disabled veteran business enterprises

Information on Certified Minority Business Enterprises (CMBE) and Certified Service-Disabled Veteran Business Enterprises (CSDVBE) is available from the Office of Supplier Diversity at:

[http://dms.myflorida.com/other\\_programs/office\\_of\\_supplier\\_diversity\\_osd/](http://dms.myflorida.com/other_programs/office_of_supplier_diversity_osd/).

Quarterly Reports of revenue paid to certified W/MBE and certified SDVBE contractors (agents or subcontractors) as a result of any award shall be provided to the Agency Purchasing Office by the Prime Contractor on an Agency by Agency (or other eligible user) level.

### **3.18.2 Environmental Considerations**

Florida Governor Charlie Crist signed Executive Order 07-126, titled “Leadership by Example: Immediate Actions to Reduce Greenhouse Gas Emissions from Florida State Government”; Executive Order 07-127, “Immediate Actions to Reduce Greenhouse Gas Emissions within Florida”; and Executive Order 07-128, “Florida Governor’s Action Team on Energy and Climate Change.”

The State supports and encourages initiatives to protect and preserve our environment. The Prime Contractor shall submit as part of any response the Prime Contractor’s plan to support the procurement of products and materials with recycled content, and the intent of Section 287.045, Florida Statutes. The Prime Contractor shall also provide a plan for reducing and or handling of any hazardous waste generated by Prime Contractor’s company. Reference Rule 62-730.160, Florida Administrative Code. It is a requirement of the Florida Department of Environmental Protection that a generator of hazardous waste materials that exceeds a certain threshold must have a valid and current Hazardous Waste Generator Identification Number. This identification number shall be submitted as part of Prime Contractor’s explanation of its company’s hazardous waste plan and shall explain in detail its handling and disposal of this waste.

Describe what efforts your company (as Contractor) will take to encourage the participation and support of these and other environmental programs.

### **3.18.3 Certification of Drug-Free Workplace Program.**

The State supports and encourages initiatives to keep the workplaces of Florida’s Suppliers and Prime Contractors drug free. Section 287.087 of the Florida Statutes provides that, where identical tie responses are received, preference shall be given to a response received from a Respondent that certifies it has implemented a drug-free workforce program. If applicable, Respondent shall certify that the Respondent has a drug-free workplace program using the “Certification of Drug-Free Workplace” as provided in Sourcing Tool for this solicitation. The Prime Contractor shall describe how it will address the implementation of a drug free workplace in offering the items of the solicitation. Certification shall be submitted (in the Sourcing Tool) using the form in Section 7.6.

### **3.18.4 Products Available from the Blind or Other Handicapped (RESPECT).**

The State supports and encourages the gainful employment of citizens with disabilities. 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, 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 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>.

The Respondent shall describe how it will address the use of RESPECT in offering the items of the solicitation.

### **3.18.5 Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).**

The State supports and encourages the use of Florida correctional work programs. 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. Additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.

The Prime Contractor shall describe how it will address the use of PRIDE in offering the items of the solicitation.

**3.19 Firm Response.**

The Department may make an award within one hundred eighty (180) days after the date of the opening, during which period responses shall remain firm and shall not be withdrawn. If award is not made within one hundred eighty (180), the response shall remain firm until either the Department awards the Contract or the Department receives from the Respondent written notice that the response is withdrawn. Any response that expresses a shorter duration may, in the Buyer's sole discretion, be accepted or rejected.

**3.20 Lobbying.**

The Service Provider or Respondent shall not lobby the legislative, judicial, or executive branches, or any State Agency about any aspect of this Contract during the procurement process (i.e. from the time the Contract is advertised to the execution of the Contract) associated with the Contract. Violation of this restriction may be cause for disqualification from the procurement process. Respondents are advised that the following will be included in the Contract for these services:

In accordance with Section 216.347, Florida Statutes, and as provided herein, the Service Provider or Contractor may not expend any State funds for the purpose of lobbying the legislature, the judicial branch, the executive branch, or any State Agency.

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## Section 4

### General Contract Conditions, State of Florida Form PUR 1000

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#### **4.1. Definitions.**

The definitions contained in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

- (a) "Contract" means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.
- (b) "Customer" means the State agency or other entity identified in a contract as the party to receive commodities or contractual services pursuant to a contract or that orders commodities or contractual services via purchase order or other contractual instrument from the Contractor under the Contract. The "Customer" may also be the "Buyer" as defined in the PUR 1001 if it meets the definition of both terms.
- (c) "Product" means any deliverable under the Contract, which may include commodities, services, technology or software.
- (d) "Purchase order" means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, contract or other authorized means).

#### **4.2. Purchase Orders.**

In contracts where commodities or services are ordered by the Customer via purchase order, Contractor shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract and solicitation terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor's order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(15) and (16) of the Florida Statutes.

#### **4.3. Product Version.**

Purchase orders shall be deemed to reference a manufacturer's most recently release 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.

#### **4.4. Price Changes Applicable only to Term Contracts.**

If this is a term contract for commodities or services, the following provisions apply.

- (a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.
- (b) Best Pricing Offer. During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.
- (c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.
- (d) Trade-In. Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.
- (e) Equitable Adjustment. The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing 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 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.

#### **4.5. Additional Quantities.**

For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.

#### **4.6. Packaging.**

Tangible product shall 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 shall become and remain Customer's property.

#### **4.7. Inspection at Contractor's Site.**

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

#### **4.8. Safety Standards.**

All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.

**4.9. Americans with Disabilities Act.**

Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.

**4.10. Literature.**

Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.

**4.11. Transportation and Delivery.**

Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.

**4.12. Installation.**

Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product 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. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

**4.13. Risk of Loss.**

Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon

rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

#### **4.14. Transaction Fee.**

The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System (“System”). Pursuant to section 287.057(23), Florida Statutes (2002), all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.

*FOR PAYMENTS WITHIN THE STATE ACCOUNTING SYSTEM (FLAIR OR ITS SUCCESSOR), THE TRANSACTION FEE SHALL, WHEN POSSIBLE, BE AUTOMATICALLY DEDUCTED FROM PAYMENTS TO THE CONTRACTOR. IF AUTOMATIC DEDUCTION IS NOT POSSIBLE, THE CONTRACTOR SHALL PAY THE TRANSACTION FEE PURSUANT TO RULE 60A-1.031(2), F.A.C. BY SUBMISSION OF THESE REPORTS AND CORRESPONDING PAYMENTS, CONTRACTOR CERTIFIES THEIR CORRECTNESS. ALL SUCH REPORTS AND PAYMENTS SHALL BE SUBJECT TO AUDIT BY THE STATE OR ITS DESIGNEE.*

*CONTRACTOR SHALL RECEIVE A CREDIT FOR ANY TRANSACTION FEE PAID BY THE CONTRACTOR FOR THE PURCHASE OF ANY ITEM(S) IF SUCH ITEM(S) ARE RETURNED TO THE CONTRACTOR THROUGH NO FAULT, ACT, OR OMISSION OF THE CONTRACTOR. NOTWITHSTANDING THE FOREGOING, A TRANSACTION FEE IS NON-REFUNDABLE WHEN AN ITEM IS REJECTED OR RETURNED, OR DECLINED, DUE TO THE CONTRACTOR'S FAILURE TO PERFORM OR COMPLY WITH SPECIFICATIONS OR REQUIREMENTS OF THE AGREEMENT.*

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering reprocurement costs from the Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE subject to being removed from the Department of Management Services' vendor list as provided in rule 60A-1.006, F.A.C.**

#### **4.15. Invoicing and Payment.**

Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. The State may require any other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract.

At the State's option, Contractors may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Contractor supply electronic invoices in lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to the Customer through the Ariba Supplier Network (ASN) in one of the following mechanisms – EDI 810, cXML, or web-based invoice entry within the ASN.

Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. Contractors may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State Agencies. The Customer is responsible for all payments under the Contract. A Customer's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve the Contractor of its obligations to the Department or to other Customers.



#### **4.16. Taxes.**

The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. Any exceptions to this paragraph shall be explicitly noted by the Customer in the special contract conditions section of the solicitation or in the Contract or purchase order.

#### **4.17. Governmental Restrictions.**

If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, 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 cancel the Contract at no further expense to the Customer.

#### **4.18. Lobbying and Integrity.**

Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) 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 exercise of discretion, or violation of a known legal duty, or (2) 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 (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of 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 Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dlis.dos.state.fl.us/barm/genschedules/gensched.htm>). 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 this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

#### **4.19. 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 Customers, 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 a Customer.

Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Customers 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 a Customer's misuse or modification of Contractor's products or a Customer's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order. 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 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 Customer 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 Customer in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.

#### **4.20. Limitation of Liability.**

For all claims against the Contractor under any contract or 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 \$100,000, 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 Contract or in the purchase order, 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 Customer 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.

#### **4.21. Suspension of Work.**

The Customer may in its sole discretion suspend any or all activities under the Contract or purchase order, at any time, when in the best interests of the State to do so. The Customer shall provide the Contractor written notice outlining the particulars of suspension. Examples of the 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 shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the Customer shall either (1) issue a notice authorizing resumption of work, at which

time activity shall resume, or (2) terminate the Contract or purchase order. Suspension of work shall not entitle the Contractor to any additional compensation.

#### **4.22. Termination for Convenience.**

The Customer, by written notice to the Contractor, may terminate the Contract in whole or in part when the Customer determines in its sole discretion that it is in the State'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 shall not be entitled to recover any cancellation charges or lost profits.

#### **4.23. Termination for Cause.**

The Customer may terminate the Contract if the Contractor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall 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 shall 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 shall 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.

#### **4.24. 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 Customer 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 Customer. The Contractor shall 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 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 Customer determines, in its sole discretion, that the delay will

significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers 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 Contract quantity, or (3) terminate the Contract in whole or in part.

#### **4.25. Changes.**

The Customer may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Customer may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Customer may solicit separate bids to satisfy them.

#### **4.26. Renewal.**

Upon mutual agreement, the Customer and the Contractor may renew the Contract, in whole or in part, for a period that may not exceed 3 years or the term of the contract, whichever period is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.

#### **4.27. Purchase Order Duration.**

Purchase orders issued pursuant to a state term or agency contract must be received by the Contractor no later than close of business on the last day of the contract's term to be considered timely. The Contractor is obliged to fill those orders in accordance with the contract's terms and conditions. Purchase orders received by the contractor after close of business on the last day of the state term or agency contract's term shall be considered void.

Purchase orders for a one-time delivery of commodities or performance of contractual services shall be valid through the performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the single delivery/performance, and shall survive the termination of the Contract.

Contractors are required to accept purchase orders specifying delivery schedules exceeding the contracted schedule even when such extended delivery will occur after expiration of the state term or agency contract. For example, if a state term contract calls for delivery 30 days after receipt of order (ARO), and an order specifies delivery will occur both in excess of 30 days ARO and after expiration of the state term contract, the Contractor will accept the order. However, if the Contractor expressly and in writing notifies the ordering office within ten (10) calendar days of receipt of the purchase order that Contractor will not accept the extended delivery terms beyond the expiration of the state term contract, then the purchase order will either be amended in writing by the ordering entity within ten (10) calendar days of receipt of the contractor's notice to reflect the state term contract delivery schedule, or it shall be considered withdrawn.

The duration of purchase orders for recurring deliveries of commodities or performance of services shall not exceed the expiration of the state term or agency contract by more than twelve months. However, if an extended pricing plan offered in the state term or agency contract is selected by the ordering entity, the contract terms on pricing plans and renewals shall govern the maximum duration of purchase orders reflecting such pricing plans and renewals.

Timely purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the recurring delivery/performance as provided herein, and shall survive the termination of the Contract.

Ordering offices shall not renew a purchase order issued pursuant to a state term or agency contract if the underlying contract expires prior to the effective date of the renewal.

**4.28. Advertising.**

Subject to Chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including, but not limited to 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 State or the Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

**4.29. Assignment.**

The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Customer. In the event of any assignment, the Contractor remains secondarily liable for performance of the contract, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written notice to Contractor of its intent to do so.

**4.30. Antitrust Assignment.**

The Contractor and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida. Therefore, the contractor hereby assigns to the State of Florida any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.

**4.31. Dispute Resolution.**

Any dispute concerning performance of the Contract shall be decided by the Customer's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, the Contractor files with the Customer a petition for administrative hearing. The Customer's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.

Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.

**4.32. Employees, Subcontractors, and Agents.**

All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Customer and shall comply with all controlling laws and regulations relevant to the services they are providing under the Contract. The State may

conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

**4.33. Security and Confidentiality.**

The Contractor shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or Customer. The Contractor shall 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 State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

**4.34. Contractor Employees, Subcontractors, and Other Agents.**

The Customer and the State shall take all actions necessary to ensure that Contractor's employees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to, 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 State of Florida.

**4.35. Insurance Requirements.**

During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. Upon request, the Contractor shall provide certificate of insurance. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.

**4.36. 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.

**4.37. Warranty of Ability to Perform.**

The Contractor 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 Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.

**4.38. Notices.**

All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery to the agency designee identified in the original solicitation, or as otherwise identified by the Customer. Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.

**4.39. Leases and Installment Purchases.**

Prior approval of the Chief Financial Officer (as defined in Section 17.001, F.S.) is required for State agencies to enter into or to extend any lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017 of the Florida Statutes.

**4.40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).**

Section 946.515(2), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles which are the subject of, or required to carry out, the Contract shall be purchased from the corporation identified under Chapter 946 of the Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of the Contract the person, firm, or other business entity carrying out the provisions of the Contract shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned." Additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.

**4.41. Products Available from the Blind or Other Handicapped.**

Section 413.036(3), F.S. requires the following statement to be included in the solicitation: "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, 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 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>.

**4.42. Modification of Terms.**

The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Customer and the Contractor. No oral agreements or representations shall be valid or binding upon the Customer or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, 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 product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

**4.43. Cooperative Purchasing.**

Pursuant to their own governing laws, and subject to the agreement of the Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-Customer

purchases are independent of the agreement between Customer and Contractor, and Customer shall not be a party to any transaction between the Contractor and any other purchaser. State agencies wishing to make purchases from this agreement are required to follow the provisions of s. 287.042(16)(a), F.S. This statute requires the Department of Management Services to determine that the requestor's use of the contract is cost-effective and in the best interest of the State.

**4.44. Waiver.**

The delay or failure by the Customer to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Customer's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

**4.45. Annual Appropriations.**

The State's performance and obligation to pay under this contract are contingent upon an annual appropriation by the Legislature.

**4.46. Execution in Counterparts.**

The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**4.47. Severability.**

If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.

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## Section 5.0

### Special Contract Conditions

**Note: Special Contract Conditions in Section 5 will supersede and supplement General Contract Conditions (PUR 1000) contained in Section 4.**

- 5.1 Purchasing Card Program
- 5.2 Product Acceptance
- 5.3 Contract Service Requirements
- 5.4 Performance Standards
- 5.5 Insurance Requirements
- 5.6 Performance Bond
- 5.7 Intellectual Property
- 5.8 Confidential Information
- 5.9 Delivery
- 5.10 Contract Reporting Requirements
- 5.11 Business Review Meetings
- 5.12 Implementation of Contract
- 5.13 Contractor's State Contract Webpage
- 5.14 Electronic Invoicing
- 5.15 Request for Quotes
- 5.16 Pricing
  - 5.16.1 Pricing Evaluation
  - 5.16.2 Growth Capacity Expectations
  - 5.16.3 Pricing Models
- 5.17 Price Adjustments
- 5.18 Contract Revisions
- 5.19 New Product Additions
- 5.20 References
- 5.21 Purchase Orders
- 5.22 Authorized Dealers
- 5.23 Compliance with Laws
- 5.24 Environmental Standards
  - 5.24.1 Florida Climate Friendly Products

- 5.24.2 Energy Star Compliant
- 5.25 Packaging
- 5.26 Manufacturer's Name and Approved Equivalents
- 5.27 Title to Deliverables
- 5.28 Software License Grant
- 5.29 Warranty
- 5.30 Warranty of No Hardstop/Passive License Monitoring

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### **5.1 Purchasing Card Program.**

The State of Florida has implemented a purchasing card program, using the Visa platform. Contractors may receive payment from state agencies by the purchasing card in the same manner as other Visa purchases. Visa acceptance is mandatory but is not the exclusive method of payment. The State reserves the right to change the platform as necessary. The State will not fill out any contractor forms or contracts in association with the Contractor accepting a purchasing card payment. Contractors are not allowed to charge a fee for accepting a purchasing card payment. Surcharges or convenience fees are prohibited. Fees should not be charged for using a purchasing card unless the fees are charged for all methods of payment (cash, check, debit cards, vouchers, etc.), and must be approved by the Customer prior to order acceptance.

On-line billing or payment systems maintained by the Contractor will not store the card holder's account number and expiration date for re-use. Card holders will provide the Contractor with card account information at each transaction.

### **5.2 Product Acceptance.**

“Acceptance and Accepted” means, with respect to each Deliverable, that the resulting services provided by the Contractor have been fully acknowledged in writing by the Eligible User as to meeting the specified requirements established in the Contract or Agreement.

Section 215.422, F.S., states that “Approval and inspection of goods or services shall take no longer than 5 working days unless the bid specifications, purchase order, or contract specifies otherwise.”

The IT Disaster Recovery Services contract allows additional time for acceptance of a product or service in order to account for special customizations, product testing, or vendor installations. Any special conditions must be expressed in writing either on the PO (purchase order), DO (Direct Order), or in the SOW (statement of work) that is attached to the PO/DO and the vendor must have agreed to any special acceptance time frames in advance.

For software, product acceptance shall be as follows:

- If software is downloaded, the date of acceptance shall be the date of the PO/DO. If the customer downloads software that appears to contain errors or if the file is corrupt, the customer shall immediately contact the vendor to resolve the issue.
- If the software is shipped, the customer has 5 business days from the date of physical receipt of the product to receive the items.
- If the product is a software license renewal, then the acceptance date shall be the date of the PO/DO.
- If the software requires customizations or special installation from the vendor, the acceptance date will be determined by the Eligible User and agreed to by the vendor and will depend upon satisfactory testing results and completion of the installation as stated in the customer's statement of work.

### **5.3 Contract Service Requirements.**

Requests by State Agencies and Eligible Users for Product Literature, Price Lists, and Specifications must be provided within five (5) working days after receipt of written request, at no charge to Eligible Users. However, the Department reserves the right to review and approve all Product

Literature, Price Lists, and promotional materials before distribution to State Agencies and Other Eligible Users.

Awarded contractor(s) shall have a single point of contact for customer support. This individual may support multiple Eligible Users and respond to Eligible User calls and/or emails within twenty-four (24) hours. Customer Support contact information shall be provided on the Ordering Instructions form. The Contractor(s) shall make all Eligible Users of the contract aware of its existence at the time of order to ensure that contractual pricing is utilized.

Contractor(s) shall provide toll-free customer service phone support from 7:00 AM (EST) to 6:00 PM (EST) Monday through Friday, except for National and State recognized holidays. TDD (Telecommunication Device for the Deaf) access must be made available during the above customer service operating hours.

Contractor(s) shall provide an after-hours contact number for use by Eligible Users for emergency orders after standard customer service operating hours.

#### **5.4 Performance Standards**

The Contractor must warrant that all work performed complies with customary, reasonable, and prudent standards of care in accordance with the industry. Additional performance standards/requirements may be requested in the Eligible User's P.O./D.O. or S.O.W. If the level of performance is not to industry standard, the Department, in its sole discretion, may consider such failure as a default. Except as expressly stated in this section, there are no warranties, expressed or implied. The Contractor disclaims any implied warranties of merchantability and fitness for a particular purpose.

#### **5.5 Insurance Requirements**

The Contractor may be required by the Eligible User to carry general liability coverage, which shall include errors and omissions coverage, or the aggregate total of all Purchase Documents outstanding at any one period of time, whichever amount is greater. If requested, the Contractor shall add the Eligible User as an additional insured on the general liability coverage. The insurance shall cover the entire Contractor's operations required by the Eligible User and shall be effective throughout the term of the Agreement, as well as any renewals or extensions thereto. It is not the intent of this Contract to limit the types of insurance otherwise required by this Contract or that the Contract may desire to obtain or be required to obtain by law. The Contractor must submit a Certificate of Insurance indicating coverage for general liability purposes and additional insured coverage, if required, and shall maintain and pay for same throughout the term of any agreement. A Certificate of Insurance indicating adequate coverage shall be submitted upon request to the Eligible User prior to the issuance of any Purchase Document. Any and all insurance policies shall be through insurers qualified to do business in the State of Florida.

#### **5.6 Performance Bond**

Eligible Users may require the Contractor to furnish, without additional cost, a performance bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of work under the Contract. The amount of the bond shall be determined by the Eligible User at the time of the request and must be provided by the Contractor to the Eligible User before any agreement can be finalized.

#### **5.7 Intellectual Property**

Unless otherwise expressly agreed to, any ideas, concepts, know-how, data processing techniques, data compilations, software, documentation, diagrams, schematics or other designs developed by the

Contractor personnel in connection with this Contract shall be the exclusive property of the Eligible User. The Parties agree that any joint or future software development effort shall be subject to a separate agreement signed by the Eligible User and the Contractor, wherein all ownership and license rights to such developed product shall be specified in detail. In the absence of such agreement, each party shall maintain sole ownership of its own protectable proprietary materials, which are developed or owned solely by the Eligible User or the Contractor, respectively. Nothing in this Agreement shall affect in any way the Department, Contractor, or third party, ownership of all right, title and interest in and to any existing contractor, or third party, system software, application software, routines, techniques, ideas or formulae which may be utilized in whole or in part by either Party in performing services hereunder, or any modifications, enhancements or derivative works thereof, which shall remain solely the property of the Contractor.

### **5.8 Confidential Information**

Each Party may have access to confidential information made available by the other. The Parties agree that each party shall protect such confidential information in the same manner as it protects its own confidential information of like kind. Disclosure of any confidential information received by the State of Florida will be governed by the provisions of the Florida Public Records Act, Chapter 119, Florida Statutes.

### **5.9 Delivery.**

Pricing shall include inside delivery to the ordering agency within 30 days after receipt of purchase order and shall be subject to the acceptance criteria previously stated in Section 5.2.

### **5.10 Contract Reporting Requirements.**

The Contractor shall be responsible to report sales data to the Contract Manager on a quarterly basis using the (State Term Contract) STC Quarterly Report Form in Section 7.13 of the RFP. The State of Florida is not a party to the contractual relationship between the Contractor and their resellers therefore; the Contractor is responsible for all reporting (including reseller sales, if any) and must report any and all sales to Eligible Users each quarter.

- The following data must be reported to the Contract Manager on a quarterly contract basis:  
Report shall include:
  - Contractor Name and FEIN number
  - Contact Information
  - Reporting Period
  - Total dollar value of purchases per quarter as noted on the form.
    - Sales must be broken down by Agency name and Other Eligible User name and must indicate whether the sales were recorded as a P-Card sale or paid by Warrant.
  - Total dollar value of purchases per quarter.
  - Minority Business Spend shall be included in the same report on the tab marked CMBE Spend Report.
- Financial Viability Statement. Contractor shall provide a copy of their Dun and Bradstreet report and shall be responsible to immediately notify the Contract Manager of any changes in the company's financial status that would affect the Contractor's ability to fulfill their contract obligations with the State.

Failure to provide quarterly sales reports, including providing a report when there have been no sales, within thirty (30) calendar days following the end of each quarter (January, April, July and October) may result in the contract supplier being found in default and may cause termination of the contract.

Submission of the Contract Sales Summaries shall be the responsibility of the Contractor without prompting or notification by the Contract Manager. The Contractor will submit the completed Contract Sales Summary report by email to the Contract Manager.

#### **5.11 Business Review Meetings.**

In order to maintain the partnership between the Department and the Contractor, each quarter the Department may request a Business Review meeting. The business review meeting may involve, but is not be limited to, the following:

- Review of Contractor performance
- Review of minimum required reports
- Review of continuous improvement plans

The Department encourages Contractors to identify opportunities to generate lower costs. A continuous improvement effort, consisting of various ideas to enhance business efficiencies, may be discussed at the Business Review meetings or as identified.

#### **5.12 Implementation of Contract.**

In order to streamline the procurement process and provide ease of use for state agency buyers, the Contractor **may** provide its catalog data electronically using the State's eProcurement system through a "punch-out" solution in which the Agency accesses the Contractor's website directly from the system, rather than the system maintaining the Contractor's data. This solution must allow the Agency to reach the Contractor's site, browse for Contracted items only, and return to the system with a list of items ready to be inserted into a requisition. Returned product information must include, but is not limited to, Contractor name, brand/manufacturer, SKU, product name, brief description (for supplies, include what machine product is for), recycled content flag, approved green product flag, certifying green label / standard, unit of measure, and price.

If the Contractor does not choose to provide a punch-out catalog, the Contractor may provide a Line-Item catalog or Ordering Instructions. A sample of a Line-Item Catalog is provided for review in Section 7. All awarded contractors must make their awarded products and prices available on the Contractor's Florida Specific website as required in Section 5.13, Contractor's State Contract Webpage.

The Contractor will have up to sixty (60) days, after contract award, to establish a State Contract punch-out website or a Line Item Catalog, if applicable. The MyFloridaMarketPlace ("MFMP") third-party Service Provider is responsible for working with Contractor to assist in the implementation of a punch-out solution with the eProcurement System or a Line-Item Catalog in Aravo. To accomplish this conversion, the awarded Contractor shall provide requested information directly to the Service Provider in the format required by the Service Provider. No costs or expenses associated with providing this information shall be charged to the Department, Eligible Users, or Service Provider.

Contractor punch-out solution must meet the following requirements:

- The solution must conform to cXML 1.0 or 1.1 standards.
- The solution must conform to the technical specifications and implementation requirements provided by the Department of Management Service's MFMP third party provider, and the Contractor must work with the third party provider to ensure successful integration of the punch-out solution into the system

- The solution must have the capability to provide only those products awarded under the Contract, and block any non-Contract item(s) from being added to the requisition.
- The punch-out site must provide the Contract Manager, or designee, the ability to audit catalog items and prices and must provide a method to download loaded items and prices into an Excel file format. Audit time and date shall be determined by the Contract Manager and shall occur at random intervals.

(Note: Contractors who currently have e-commerce capabilities should already have the ability to do a punch-out site. See Section 7.17 to review the Punch-out Capability Questionnaire, Section 7.14 to see a sample Aravo template used for Line Item catalogs, and Section 7.10 to view the Electronic Invoicing Requirements.)

### **5.13 Contractor's State Contract Webpage.**

The Contract resulting from this solicitation will become a public document. State Purchasing uses its web page to distribute State Term Contract and product information to eligible users and other interested entities.

The Contractor shall, within thirty (30) days after the date of award, develop and maintain a State Contract web page on the Internet to post approved Contract information, which shall include pricing, percentage discounts, terms, catalogs, ordering instructions, descriptive information, list of products that meet the State of Florida's approved green product labels / standards, and product pictures. The Home Page must be compatible with the most recent version of browser software being used by the Department. As of the writing of this solicitation, Internet Explorer 7.0 is the Department's Internet browser standard. The Department intends to upgrade to new browser versions as they become available and fully tested, at its discretion. The Universal Resource Locator (URL) for the Internet Home Page must be listed in the space provided on the Ordering Instructions page of the solicitation. No costs or expenses associated with providing this information shall be charged to the State.

The State Contract vendor supplied web site must have the following requirements:

- Specify that the web page is for the State of Florida
- Contract Number and Beginning and Ending Contract Dates
- State of Florida approved Contract pricing;
- Detailed item descriptions, item numbers, unit of measure;
- Robust search engine capabilities;
- Authorized Dealers, if any;
- Additional links or information to access product literature of awarded items;
- Additional links to the vendor's home page, the history of the company, etc.;
- Additional links to access technical product literature of awarded items;
- Servicing dealers with current contact information;
- Offer photos of awarded products (where applicable);
- List of products that meet the State of Florida's approved green product labels / standards;
- When possible, provide indicators of recycled product and minority manufactured products; and;
- Universal Resource Locator (URL) for the Internet Page must be supplied to the Department and approved prior to the implementation of the Contract.

Additional mandates include:

- If unauthorized information is discovered on the State Contract Web Page, the Contractor's link may be immediately disconnected and the Contractor shall be liable for any incorrect or unauthorized purchases.

- Access to the Contractor’s State Contract Web Page, or to links or documents on that Web Page, shall not require a password.
- Contractor’s State Contract Web Page shall be compatible with the current version of browser software used by State Purchasing.
- Barring unexpected technological interruptions or forces of nature, frequent or consistent web page inaccessibility may be grounds for contract termination.

Contractors should note that the US Federal Trade Commission’s Guides to the Use of Environmental Marketing Claims (Green Guides) regulate how companies label and advertise using environmental claims / terms. See [Environmental marketing claims](#) (16 C.F.R. Part 260) for details. It is the Contractor’s responsibility to accurately identify their products that meet the State of Florida’s approved green product labels / standards (e.g., Energy Star, Green Seal) in their electronic catalog, punch-out site and on State Contract web page. Failure to accurately represent green products may result in the Contractor’s immediate removal from the contract.

**5.14 Electronic Invoicing.**

Notwithstanding any provision of the contract, the contractor may supply electronic invoices in lieu of paper-based invoices for those transactions processed through the State’s eProcurement system. Electronic invoices shall be submitted to the agency through the Ariba Supplier Network (ASN) in one of the following mechanisms – cXML, EDI 810 or web-based invoice entry within the ASN.

For the purposes of this section, the contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the State’s third party eProcurement provider, the right and license to use, reproduce, transmit, distribute and publicly display within the system the information outlined above. In addition, the contractor warrants and represents that it is authorized and empowered to and hereby grants the State, and the third party provider, the right and license to reproduce and display within the system the contractor’s trademarks, system marks, logos, trade dress or other branding designation that identifies the products made available by the contractor under the contract. If the contractor is not the manufacturer, it shall be the contractor’s responsibility to obtain authorization from the manufacturer to comply with the provisions of this section, including securing any intellectual property rights of the manufacturer.

**5.15 Requests for Quotes.**

Additional quotes are not required under this contract; however, customers have the option to initiate a request for quotes (RFQ), which is an oral or written request for written pricing or service information from a Contractor/Authorized Dealer for products available under the Contract from that Contractor. If Eligible Users elect to utilize a RFQ, they shall create and maintain written records of oral and written requests, as well as records of quotes received. Quotes shall be in writing but otherwise informal, and need not be received or posted publicly or at a particular time or place. A Customer shall initiate a sufficient number of requests to obtain a minimum of three quotes, and shall place its purchase order with the Contractor quoting the lowest price, unless the Customer documents in writing that the lowest price quote would not result in best value.

**5.16 Pricing.**

Pricing proposed must be better than or comparable to pricing models provided to other government entities of the same size and class as the State of Florida. Similarly situated states shall include California, Texas and New York.

Cost savings/avoidance shall reflect a discount percentage off of the respondent’s current “Manufacturers Retail Price.” Price sheets shall reflect the pricing requested within this RFP and include the MSRP, discount rate, and special Florida Price. State agencies and other Eligible Users



shall have the right to purchase additional products offered by the Contractor under the same terms and conditions, for the length of this contract, to simplify additional purchases.

**5.16.1 Pricing Evaluation** – The Respondent must complete the Price Sheet (see Section 7, Forms). Vendors are encouraged to provide a wide variety and range of products and may include their entire catalog of products and services related to IT disaster recovery. Respondents are encouraged to provide pricing for all options, value add, tiered discounts and volume or aggregate sales discounts as appropriate. The Respondent is also encouraged to supply additional price breakdowns as practical within each category of products and services, and/or any additional components(s) the offeror considers critical to meeting the total state's IT disaster recovery needs.

**5.16.2 Growth Capacity Expectations** – Respondent is encouraged to provide pricing that takes into account the potential for growth with regard to additional storage needs, hardware needs, software requirements, new technology, agency consolidations or changes in agency size, data center consolidation models, or other scenarios that may require a change in planned expectations. The formula for calculating equipment growth is discussed in Section 6.2.9 of this RFP.

**5.16.3 Pricing Models** - Respondent shall provide pricing models for the categories listed below as they pertain to the scope of work outlined in Section 6. Prices must be submitted using the attached Price Sheet in Section 7.2 of this solicitation. Pricing models shall include one or more of the following:

- Hot-site solutions
- Warm-site solutions
- Cold-site solutions
- Mobile-site solutions
- Tape Backup/Archiving Solutions
- Disk-Based Backup Solutions
- Live-streaming Backup Solutions
- Backup Solutions for Web-based programs
- Multi-Platform Protection solutions
- Virtualization solutions
- Cloud Computing solutions
- Remote Management solutions
- Transfer or assignment of contracts from state agencies to hosting or “primary” data centers.
- Location licensing, which will allow for a change in location and transfer of ownership.
- Hardware and Software Upgrade costs
- Maintenance agreements (standard and consolidated)
- Added Value  
Respondents are encouraged to provide products and services that provide an added value to the state such as training and additional services.
- Special Pricing Incentives  
In accordance with the terms and conditions of this Request for Proposal, the Contractor may submit offerings for special pricing incentives (i.e. tiered discounts, volume or aggregate spend discounts) or other incentives related to areas such as competitive replacement, consolidation and standardization, or other opportunities to support cost savings to the state. Such offerings may be bundled with services as noted in Section 5 of this solicitation.

### 5.17 Price Adjustments.

Prices shall be firm against increase for 24 months from the original effective date of contract. Requests for increase/decrease may be submitted to the State if there has been, or is, a documented change in cost, with the State reserving the right to accept or reject requests within thirty (30) days after receipt of request. Price increases may be requested by the Contractor one (1) time per year, on the contract anniversary date, (following the 24-month price freeze) by using the Producer Price Index (PPI) for Industry: “Data Management and Storage, Information Transformation and other Services”, as published by the U.S. Bureau of Labor Statistics. The rate adjustments will be based on the PPI (Series ID PCU5182105182104). The Contractor may offer price reductions at any time and the State may request a reduction in price any time the PPI shows de-escalation in costs.

The last published non-preliminary Producer Price Index for the month prior to the award/anniversary date of the contract will be the reference date for the beginning (old) PPI Index. The most recent published Producer Price Index prior to the contract year to be priced will establish the reference data for the New PPI Index.

All requests for price adjustments must be substantiated by manufacturer's certification of cost or other documentation and approved by the State of Florida's Contract Administrator prior to implementation. There can only be one rate increase adjustment per twelve (12) month period and the maximum net rate percentage increase per twelve (12) month period shall not exceed the PPI allowable amount or 3%, whichever is less.

The price escalation/de-escalation formula will be tied to the change in the commodity for Data Management and Storage, PPI Series ID PCU5182105182104. The formula is calculated by dividing the New PPI Index by the Old PPI Index to identify the Price Escalation Rate. The Old Price is multiplied by the Price De-escalation/Escalation Rate to determine if a price reduction or increase is warranted. This formula applies after Year 2 of the contract and on each subsequent anniversary of the contract effective date.

Details on how this PPI has historically performed can be found at the Bureau of Labor Statistics web site and following the below steps:

- Go to BLS website: <http://www.bls.gov/ppi/#data>
- Click on the PPI Databases link
- Select “Industry Data (one screen)”
- Box 1 - Type “518210” in the “Select an Industry” box and click the adjacent “Find” button.
- Box 2 - Select “5182105182104” for “Data Management and Storage, Information Transformation and other Services” in the “Select One or More Products” box and click the “Get Data” button (Box 3). A table similar to the one shown below will be created.

Series Id: PCU5182105182104													
Industry: Data processing and related services													
Product: Data management and storage, information transformation and other services													
Base Date: 200012													
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
2000												100.0	
2001	100.9	100.9	99.5	100.4	100.7	100.6	100.3	100.8	101.0	100.6	100.9	100.8	100.6
2002	102.3	103.0	101.8	103.0	102.9	102.9	102.9	103.3	102.7	102.4	102.4	103.0	102.7
2003	102.7	104.6	103.3	103.9	104.2	104.1	103.6	104.3	102.6	103.1	103.1	103.1	103.6
2004	103.1	105.3	104.8	104.8	104.8	104.8	104.8	104.8	105.0	104.2	104.2	104.2	104.6

2005	104.2	104.8	104.8	104.8	104.8	104.8	104.8	104.8	104.8	104.8	104.8	104.8	104.8
2006	104.8	104.8	104.8	104.9	104.9	104.9	104.9	104.9	104.9	104.9	104.9	104.9	104.9
2007	105.4	105.4	105.5	105.5	105.5	105.5	105.5	105.5	105.5	105.5	105.5	105.5	105.5
2008	105.5	105.5	105.5	105.5	105.5	105.5	105.5	105.4	105.9	105.9	106.1	106.1	105.7
2009	104.3	104.3	104.3	104.4	104.5	104.4	104.4	104.4	104.5(P)	104.2(P)	104.3(P)	104.3(P)	104.4(P)

P : Preliminary. All indexes are subject to revision four months after original publication.

**Example:**

Index at one year anniversary..... 104.3  
 Divided by index at time base price was set ..... 105.5  
 Equals (De-Escalation Rate)..... 0.9886

**To determine the new discount percent:**

New PPI / Old PPI = Price Escalation/De-escalation Rate (rounded to the four decimal points).  
 Then take Old Price Discount % / Price Escalation/De-escalation Rate = New Price Discount % (rounded to two decimal points).

**Calculation:**

104.3 ÷ 105.5 = .9886 (which equates to a Price De-escalation Rate of 99%)

25% ÷ 99.00% = 25.25% (New Price Discount Percent)

Any increases/decreases approved during the term of the contract shall become effective no later than thirty (30) days after approval of the request.

The Department may, in its sole discretion, make an equitable adjustment in the Contract terms and/or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all of 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 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.

**5.18 Contract Revisions**

Revisions to product offerings, pricing, terms, or presented materials must be approved by the Department prior to advertisement, implementation, or removal. Requests for revision shall be submitted in writing to the Contract Manager for review and approval. Revision requests must be submitted to the Contract Manager on the STC Change Form in Section 7.8.

**5.19 New Product Additions**

*NEW PRODUCTS WITHIN THE SCOPE OF THIS SOLICITATION MAY BE CONSIDERED FOR ADDITION TO THE CONTRACT. ALL REQUESTS FOR REVIEW SHALL BE MADE IN WRITING AND SHALL INCLUDE PRODUCT LITERATURE AND PRICING (IN EXCEL FORMAT WITH A COPY PROVIDED ON CD). NEW PRODUCTS MAY NOT BE MARKETED AS APPROVED PRODUCTS PRIOR TO WRITTEN APPROVAL FROM THE CONTRACT MANAGER. NEW PRODUCT ADDITION REQUESTS MUST BE SUBMITTED TO THE CONTRACT MANAGER USING THE STC CHANGE FORM IN SECTION 7.8.*

**5.20 References**

All respondents shall provide a minimum of three (3) governmental references for IT Disaster Recovery Services sold in the last twenty-four (24) months. References provided should support the Contractor’s ability to meet the needs of “Eligible Users” within the State of Florida. References must complete the form set forth in Section 7.7. References shall include the following: the name of the agency, university, city, county or school board, contact information

and indicate the specific products or services and where it was purchased in addition to the questions contained in the form. Failure to supply the required documentation may result in disqualification of the proposal. The State of Florida reserves the right to contact the references regarding the products/services provided.

#### **5.21 Purchase Orders**

All respondents shall provide a minimum of three (3) purchase orders or invoices with the proposal package to document the sales of each manufacturer's brand proposal. Purchase Orders shall indicate the date the order was received and the date the order was shipped to the customer. Purchase Orders provided should be comparable or represent a typical order that would be placed by a state agency or eligible user such as city, county or school. Purchase orders may, but are not required to, match the references cited above. Failure to supply the required documentation may result in disqualification of your proposal.

#### **5.22 Authorized Dealers**

Respondents may allow authorized dealers, as defined in Section 3.1, to provide products and services on their behalf using the Authorized Dealer Form indicated in Section 7.15. Respondents are encouraged to utilize Certified Minority Business Enterprise (CMBE) dealers. Respondent shall identify any CMBE dealers on the Authorized Dealer Form. Each dealer named will be responsible for product delivery and service for any orders received as well as providing assistance to Eligible Users. Dealers receiving orders on behalf of the Contractor are required to register in MyFloridaMarketPlace and with the Division of Corporations. All authorized dealers shall be under the DIRECT SUPERVISION of the awarded vendor and shall follow all contract requirements.

#### **5.23 Compliance with Laws**

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. By way of non-exhaustive example, Chapter 287, Florida Statutes and Chapter 60A, Florida Administrative Code govern the Contract. By way of further non-exhaustive example, the Contractor shall comply with section 247A(e) of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of such laws shall be grounds for Contract termination.

#### **5.24 Environmental Standards**

Florida Governor Charlie Crist signed Executive Order 07-126, titled "Leadership by Example: Immediate Actions to Reduce Greenhouse Gas Emissions from Florida State Government"; Executive Order 07-127, "Immediate Actions to Reduce Greenhouse Gas Emissions within Florida"; and Executive Order 07-128, "Florida Governor's Action Team on Energy and Climate Change."

The State supports and encourages initiatives to protect and preserve our environment. The Respondent shall submit as part of any response the Respondent's plan to support the procurement of products and materials with recycled content, and the intent of Section 287.045, Florida Statutes. The Respondent shall also provide a plan for reducing and or handling of any hazardous waste generated by Respondent's company. Reference Rule 62-730.160, Florida Administrative Code. It is a requirement of the Florida Department of Environmental Protection that a generator of hazardous waste materials that exceeds a certain threshold must have a valid and current Hazardous Waste Generator Identification Number. This identification number shall

be submitted as part of Respondent's explanation of its company's hazardous waste plan and shall explain in detail its handling and disposal of this waste.

Describe what efforts your company (as Contractor) will take to encourage the participation and support of these and other environmental programs.

#### **5.24.1 Florida Climate Friendly Products**

Contractors are encouraged to propose products that meet the Florida approved green product labels/standards.

Under the leadership of Florida Governor Charlie Crist, the Department of Management Services (DMS) encourages the purchase of environmentally preferable products (EPPs) by Florida governmental entities where possible. Upon award, Contractors will be encouraged to submit a list of their qualifying products for review and posting to the Florida Climate Friendly Products List. The current list can be viewed at the following DMS website link:

[http://dms.myflorida.com/business\\_operations/state\\_purchasing/vendor\\_information/state\\_contracts\\_agreements\\_and\\_price\\_lists/florida\\_climate\\_friendly\\_products\\_list](http://dms.myflorida.com/business_operations/state_purchasing/vendor_information/state_contracts_agreements_and_price_lists/florida_climate_friendly_products_list)

The Florida Climate Friendly Products List includes state contract approved products that have received one or more of the following certifications, labels, and standards:

[California Energy Commission \(CEC\) Appliance Efficiency Regulations](#)

[California Environmentally Preferred Products Guide](#)

[California State Agency Buy Recycled Program \(SABRC\)](#)

[Electronic Product Environmental Assessment Tool \(EPEAT\)](#)

[Energy Star](#)

[EPA Comprehensive Procurement Guidelines \(CPG\)](#)

[EPA SmartWay and SmartWay Elite](#)

[EPA WaterSense](#)

[Forest Stewardship Council \(FSC\)](#)

[Green Seal](#)

[Greenguard](#)

[MDBC's Cradle to Cradle Silver Certification \(or higher\)](#)

[Minnesota Green Guardian EPP Guide](#)

[NEMA Premium](#)

[RoHS](#)

[SCS \(Scientific Cert. Sys.\) / NSF International](#)

[Terra Choice / Ecologo](#)

[US Federal Energy Management Program \(FEMP\)](#)

[USDA Organic Label](#)

#### **5.24.2 Energy Star Compliant**

The Federal Environmental Protection Agency (EPA) encourages the manufacturer of energy efficient computer hardware, and the State supports this initiative. The Department prefers that all Products offered under the Contract be Energy Star compliant and bear the EPA Energy Star Logo.

### **5.25 Packaging**

Tangible Product(s) shall 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 shall become and remain the property of the Eligible User.

### **5.26 Manufacturer's Name and Approved Equivalents**

Unless otherwise specified, any manufacturer's names, trade names, brand names, information and/or catalog numbers listed in a specification are descriptive, not restrictive. With the Department's prior approval, the Contractor may offer any Product that meets or exceeds the applicable specifications. The Contractor shall demonstrate comparability, including appropriate catalog materials, literature, specifications, test data, etc. The Department shall determine in its sole discretion whether a Product is acceptable as an equivalent.

### **5.27 Title to Deliverables**

For the purpose of this section, a "Product" is any deliverable furnished under the Contract, including but not limited to (1) components of the hardware environment; (2) printed materials, (3) third party software, (4) programs and programming modifications, customizations, tools, data, modules, and components and (5) any tangible or intangible properties embedded therein. A product is "existing" if it is a tangible or intangible licensed product that exists before Contract work begins (the Contractor shall bear the burden of proving that a product existed before work began). A product is "custom" if it is any product, preliminary or final that is created under the Contract for the Department by the Contractor or its employees, subcontractors, or agents.

### **5.28 Software License Grant**

Where a Product is acquired on a licensed basis, the following terms shall constitute the license grant.

- **Scope:** Licensee is granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity identified on the Purchase Document. The Product may be accessed, used, executed, reproduced, displayed, or performed up to the capacity measured by the applicable licensing unit identified on the Purchase Document (e.g. payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation, etc.). Licensee shall have the right to use and distribute modifications and customizations of the Product to and for use by anyone otherwise licensed to use the Product, provided that any modifications, however extensive, shall not diminish licensor's proprietary title or interest. This paragraph grants no license, right, or interest in any trademark, trade name, or service mark.
- **Term:** The license term shall begin the date the Product is accepted as noted in Section 5.2. Where a license involves licensee's right to copy a previously licensed and accepted master copy, the term shall begin the date the Purchase Document is executed.
- **Documentation:** Upon request, the Contractor shall deliver to the licensee at the Contractor's expense (1) one master electronic copy and one hard copy of Product documentation or (2) one master electronic copy and hard copies of the Product documentation by type of license in the following amounts, unless otherwise agreed: for individual/named user, one copy per license; for concurrent users, ten copies per site; for processing capacity, ten copies per site. The master electronic copy shall be in either CD-ROM, DVD format, or other agreeable format and usable without conversion (for

example, if a unit has only a CD-ROM drive, software shall be provided on a CD-ROM). The Contractor hereby grants the Eligible User a perpetual license right to make, reproduce (including downloading electronic copies), and distribute, either electronically or otherwise, copies of Product documentation as necessary to enjoy full use of the Product in accordance with the terms of the license.

- Technical Support and Maintenance: Licensee may elect the technical support and maintenance (“Maintenance”) set forth in the Contract by giving written notice to the Contractor any time during the Contract term. Maintenance shall include, at a minimum, (1) providing error corrections, patches, updates, revisions, fixes, upgrades, and new releases to licensee, and (2) Help Desk assistance accessible via toll-free or local telephone call or on-line. The Contractor shall maintain the Products so as to provide licensee with the ability to use the Products in accordance with the Product documentation, without significant functional downtime to ongoing operations during the Maintenance term. The Eligible Users shall not be required to purchase Maintenance for use of the Product, and the Department’s license shall not be invalidated for refusal to purchase Maintenance. The Maintenance term(s) and any renewals are independent of the Contract term. The Eligible User may discontinue Maintenance at the end of any current Maintenance term upon notice to the Contractor. If the Eligible User does not initially acquire, or discontinues Maintenance, the Eligible User may at any later time reinstate Maintenance without any penalties. The Eligible User may pay a reinstatement fee, if during the time of the lapse, bug fixes, patches or other updates occurred that would be necessary in order to bring the User’s product up to the current standard.
- Transfers: Licensee’s operations may be altered, expanded, or diminished. Licenses may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between agencies. Contractor approval is not required for such transfers, but licensee shall give prior written notice to the Contractor. There shall be no additional license or other transfer fees due provided that (1) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site (e.g., named users, seats, or MKPS) or (2) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for licensee. If the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred site, and a logical or physical partition or other means of restricting use is not available, the fees due the Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.
- Restricted Use by Third Parties: Outsourcers, facilities management, service bureaus, or other services retained by licensee shall have the right to use the Product to maintain licensee’s operations, including data processing, provided that (1) licensee gives notice to the Contractor of such third party, site of intended use of the Product, and means of access, (2) the third party has executed, or agrees to execute, the Product manufacturer’s standard nondisclosure or restricted use agreement, which agreement shall be accepted by the Contractor, and (3) the third party shall maintain a logical or physical partition within its computer system to restrict access to the program to that portion solely dedicated to beneficial use for licensee. Licensee shall not be liable for any third party’s compliance or noncompliance with the terms of the nondisclosure agreement, nor shall the nondisclosure

agreement create or impose any liabilities on the State or the licensee. Any third party with whom a licensee has a relationship for a State function or business activity shall have the temporary right to use Product (e.g. Java applets), provided that such use shall be limited to the period during which the third party is using the Product for the function or activity.

- Archival Backup: Licensee may use and copy the Product and related documentation in connection with reproducing a reasonable number of copies for archival backup and disaster recovery procedures.
- Source Code Escrow: If either the Product manufacturer/developer or the Contractor offer source code or source code escrow to any other commercial customer, or if either entity seeks bankruptcy protection, then the Contractor shall either (1) provide licensee with source code for the Product, (2) place the source code in a third-party escrow arrangement with a designated escrow agent, which shall be identified to the Department, and which shall be directed to release the deposited source code in accordance with a standard escrow agreement acceptable to the Department, or (3) certify to the Department that the Product manufacturer/developer has named the State, acting by and through the Department, and the licensee, as named beneficiaries of an established escrow arrangement with its designated escrow agent, which shall be identified to the Department and licensee, and which shall be directed to release the deposited source code in accordance with the terms of escrow. Source code, as well as any corrections or enhancements, shall be updated for each new release of the Product in the same manner as provided above and such updated shall be certified in writing to the Department. The Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph. The State may release the source code to licensees under the Contract which have licensed Product or obtained services, and which may use the copy of the source code to maintain the Product.
- Confidentiality: The Product is a trade secret, copyrighted and proprietary Product. Licensee and its employees shall not disclose or otherwise distribute or reproduce any Product to anyone other than as authorized under the Contract. Licensee shall not remove or destroy any of the Contractor's proprietary markings.
- Restricted Use: Except as expressly authorized by the terms of license, licensee shall not copy the Product; cause or permit reverse compilation or reverse assembly of the Product or any portion; or export the Product in violation of any U.S. Department of Commerce export administration regulations.
- Proof of License: The Contractor shall provide to each licensee that issues a Purchase Document either (1) the Product developer's certified license confirmation certificates in the name of the licensee or (2) a written confirmation from the proprietary owner accepting the Product invoice as a proof of license. The Contractor shall submit a sample certificate, or alternative confirmation, which shall be in a form acceptable to the licensee.
- Audit of Licensed Usage: The Contractor may periodically audit, no more than annually and at its expense, use of licensed Product at any site where a copy resides provided that (1) the Contractor gives licensee at least thirty days written advance notice, (2) the audit is conducted during the licensee's normal business hours, (3) the audit is conducted by an



independent auditor chosen by mutual agreement of the licensee and Contractor as follows: the Contractor shall recommend a minimum of three auditing/accounting firms, from which the licensee shall select one; in no case shall the Business Software Alliance, Software Publisher's Association, or Federation Against Software Theft be recommended by the Contractor or used; directly or indirectly, to conduct audits, (4) the Contractor and licensee shall designate a representative who shall be entitled to participate, who shall mutually agree on audit format, and who shall be entitled to copies of all reports, data, or information obtained from the audit, and (5) if the audit shows that the licensee was not in compliance, the licensee shall purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the Contract price then in effect or, if none, then at the Contractor's U.S. commercial list price. Once such additional licenses and capacities are purchased, licensee shall be deemed to have been in compliance retroactively, and licensee shall have no further liability of any kind for the unauthorized use of the Product.

- **Bankruptcy:** The Contractor is subject to the terms of section 365(n) of the United States Bankruptcy Code ("Code") if the licensor files a bankruptcy petition. Licensor's failure to perform its continuing obligations shall constitute a material breach of the Contract excusing performance by the licensee. Upon request, the licensor shall furnish licensee any intellectual property, as defined in the Code, and any embodiment of that intellectual property held by the licensor. If licensee must hire third parties to perform support, maintenance, or development tasks previously performed by licensor, the licensee may provide intellectual property to such third-parties without violating non-disclosure or exclusivity provisions.

### **5.29 Warranty**

Contractor warrants that all Products furnished under the Contract shall be free of defective material and workmanship, and shall otherwise perform in accordance with required performance criteria, for a period of not less than one (1) year from the date of acceptance. Warranty repairs shall be completed within the time specified in any support level requirements. If it is likely that the time for repairs will exceed the specified time, the Contractor shall provide equivalent loaner equipment upon request. Loaner equipment shall be provided at no cost, including shipment to the Eligible User's location and return of loaner equipment to the Contractor.

### **5.30 Warranty of No Hardstop/Passive License Monitoring**

Unless an Eligible User is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, the Contractor hereby warrants and represents that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Contractor agrees that in the event of a breach or alleged breach of this provision that Eligible User shall not have an adequate remedy at law, including monetary damages, and that Eligible User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Authorized User shall be entitled.

## **Section 6.0**

### **Technical Specifications**

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##### 6.3 Questions for Vendors

## 6.1 ADDITIONAL DEFINITIONS

- a. “**ADP**” means the Automated Data Processing.
- b. “**Application**” means a related group of computer programs, routines, utilities, etc., developed to perform a specific function or related group of functions. May be synonymous with “System.”
- c. “**Best Value**” means the highest overall value to the state based on objective factors that include, but are not limited to, price, quality, design, and workmanship.
- d. “**Cold site**” means environmentally prepared computer space, properly equipped to facilitate the installation of a computer system comparable to the Hotsite Configuration, which the Eligible User may use for six months.
- e. “**Confidential Information**” means information in the possession or under the control of the State or the Contractor that is exempt from public disclosure pursuant to Article I, Section 24 of the Constitution of the State of Florida; the Public Records law, Chapter 119, Florida Statutes; or to any other provision that serves to exempt information from public disclosure.
- f. “**COOP**” means Continuity of Operations Plan, and is an effort within individual state agencies and other eligible users to ensure the continued performance of minimum essential functions during a wide range of potential emergencies. This is accomplished through the development of plans, comprehensive procedures, and provisions for alternate facilities, personnel, resources, interoperable communications, and vital records/databases.
- g. “**Disaster**” means any unplanned event or condition that renders an Eligible User unable to use a location for its intended computer processing and related purposes.
- h. “**Disaster Recovery**” means the process, policies and procedures related to preparing for recovery or continuation of technology infrastructure critical to an organization after a natural or human-induced disaster.
- i. “**HIPAA**” means Health Insurance Portability and Accountability Act.
- j. “**ICS**” means Incident Command System.
- k. “**ITDRP**” is Information Technology Disaster Recovery Plan, and stands for the portion of the COOP that covers the resumption and recovery of the Information Technology functions of the Eligible User.
- l. “**Hot site**” means an installed, operational computer system and networking capability equal to or better than (in all material respects including equipment quality and processing

capacity) the Hotsite Configuration described in the Eligible User's Schedule, which they may use for a time specified in the Eligible User's SOW.

- m. “**MTD – Maximum tolerable Downtime**” means the total amount of time leaders/managers are willing to accept for a business process outage or disruption and includes all impact considerations.
- n. “**NIST**” means National Institute of Standards and Technology.
- o. “**NRO – Network Recovery Objective**” means the time needed to recover or fail over network operations. NRO includes such jobs as establishing alternate communications links, reconfiguring Internet services, setting alternate TCP/IP addresses and everything else to make the recovery transparent to customers, remote users and others.
- p. “**RTO – Recovery Time Frame Objective**” means the maximum amount of time that a system resource can remain unavailable before there is an unacceptable impact on other system resources, supported business processes, and the MTD.
- q. “**RPO – Recovery Point Objective**” means the point in time, prior to a disruption or system outage, to which business process data can be recovered (given the most recent backup copy of the data) after an outage.
- r. “**Tabletop Exercises**” means discussion-based exercises where personnel meet in a classroom setting or in breakout groups to discuss their roles during an emergency and their responses to a particular emergency situation. A facilitator presents a scenario and asks the exercise participants questions related to the scenario, which initiates a discussion among the participants of roles, responsibilities, coordination, and decision-making. It is discussion-based only and does not involve deploying equipment or other resources.
- s. “**Warm site**” means a compromise between hot-site and cold-site. These sites will have hardware and connectivity already established, though on a smaller scale than the original production site or even a hot site. Warm sites will have backups on hand, but they may not be complete and may be between several days and a week old. An example would be backup tapes sent to the warm site by courier.

## 6.2 SCOPE OF SERVICES

The Purpose of this scope-of-work is to define the Disaster Recovery Services and deliverables that may be provided by the selected Service Provider, the roles & responsibilities of the parties related to delivery of services, the performance metrics for the services, and any special terms and conditions applicable to such services that may be specified by the Eligible User in a SOW and will vary depending upon the User's requirements.

### 6.2.1 RECOVERY OBJECTIVES

#### 6.2.1.1 Recovery time objective (RTO)

RTOs will be determined by individual Eligible Users and shall be stated in their statements of work. Respondents must be able to provide solutions that meet multiple RTO's both within a particular agency and for multiple agencies/eligible users. Respondent shall propose RTOs that support the following:

- Length of time to restore mission critical functions
  - Some agencies, such as those that support law enforcement or health care to special needs patients, will require a faster uptime requirement than others.
- Length of time to restore business critical functions
  - Business critical functions may require an uptime in a matter of hours.
- Length of time required for the entire system to be fully functioning
  - These functions may require an uptime in days or weeks depending upon the applications and the frequency of use.

#### 6.2.1.2 Recovery Point Objective (RPO)

RPOs will be determined by individual Eligible Users and shall be stated in their statements of work. Respondents must be able to provide solutions that meet multiple RPO's both within a particular agency and for multiple agencies/eligible users. Respondents shall propose RPOs that support the following:

- Point in time acceptable for mission critical functions
  - Some applications will accept minimal to no data loss
- Point in time acceptable for business critical functions
  - Business critical functions may accept some data loss
- Point in time acceptable for all remaining programs to be restored
  - More data loss may be acceptable

#### 6.2.1.3 Network Recovery Objective (NRO)

NRO will be determined by the individual Eligible Users and shall be stated in their statements of work. Respondents shall propose NRO's to cover any of the following:

- Establishing alternate communications links
- Reconfiguring Internet services
- Setting alternate TCP/IP addresses
- Other items necessary to make the network recovery transparent to customers

### **6.2.2 Recovery Services**

Recovery Services are the services necessary to recovery operations and the resumption of day-to-day business critical operations from both planned and unplanned events. These services may require snapshots in time, real-time duplication, archival services as well as other backup type solutions. Respondent solutions should provide a variety of options and also take into account new technologies (e.g. server virtualization) as they emerge with the following guidelines:

- The Department has the ability to update state contracted services defined herein at any time over the term of the contract, except when the Department is experiencing a disaster. Such updates shall be handled in accordance with the terms and conditions defined herein.

- The Eligible User Recovery Services and/or Network Services Schedules shall be defined in an Eligible Users Statement of Work (SOW). The SOW shall specify a location and the recovery services required by the Eligible User. The Eligible User may select the services needed from the Vendor's catalog of available services.
- When the Eligible User declares a Disaster, the Recovery Services provided by the Service Provider to the Eligible User may include the following services and shall be selected by the Eligible User and documented in an agreement between the Eligible User and the Provider:
  - Center-Based Recovery Services: These sites shall provide conditioned office space facilities that are located close to an agency's core operations and enable personnel to relocate to the Provider's facilities and quickly resume operations in the event of a disaster or disruption at the agency's location. To support recovery from the disaster or disruption, elements of the service may include:
    - Fully-operational computers with networking capability ("hot sites")
    - Environmentally-prepared computer space, properly equipped to support installation of computer systems ("cold sites")
    - Communication services
    - Network services

In addition to space, equipment, and voice and data communications lines, Center-Based Recovery Services may also include complete call center voice recovery, with call recording and customer support functions.

- Hot-site: This is a duplicate of the original site of the Eligible User, with full computer systems as well as near-complete backups of user data. Following a disaster, the Hotsite enables the Eligible User to relocate with minimal losses to normal operations. The up-time requirements for the Hotsite shall be determined by the Eligible User. Vendors shall propose optimal and optional solutions for the following:
  - Mission Critical Items
  - Business Critical Items
  - Standard Items
- Warm-site: These sites may include hardware and already established network connectivity, though on a smaller scale than the original production site or a hot site. Warm sites will have backups on hand, but they may not be complete and may be between several days and a week old. An example would be backup tapes sent to the warm site by courier.
- Cold-site: This site is an environmentally prepared computer space properly equipped to facilitate the installation of a computer system and may include tape backup warehousing.
- Office Space: Eligible Users may require an adequate and reasonable amount of office space in the same facility where the Hot-site or Cold-site is located that is properly equipped to facilitate the installation of terminals in which the Eligible User may use to operate that Hot-site or Cold-site. Eligible Users will describe office space requirements in their SOW, which may include any of the following:
  - Local network connectivity – 10/100 Ethernet

- Local network connectivity – Gigabit Ethernet
- Workstations
- Tables
- Chairs
- Data/fax/analog lines
- Fax Machines
- Paper
- Pens
- Staplers
- Printers
- Check printers (MICR)
- Wireless access
- Other
- Work Group Space: An adequate and reasonable amount of office space, properly equipped to accommodate the Work Group Configuration described in the SOW, which the Eligible User may use for the period of time determined in the Eligible User’s SOW.
- Voice Communication: Service Provider’s voice communications backup service for the number of communications ports stated in the SOW, which the Eligible User may use for the period of time determined in the Eligible User’s SOW.
- Mobile Recovery Services: Immediate and exclusive use of the services described below (“Mobile Recovery Services”), which the Eligible may use for the duration of a Disaster:
  - Replacement Recovery System: A fully operational, relocatable computer system and networking capability (“Replacement Recovery System”), equal to or better than (in all material respects including equipment quality and processing capacity) the Mobile Configuration described in the SOW, to be provided to the Eligible User by any of the following methods at Eligible User’s option:
    - Primary Recovery Facility: Access to the Replacement Recovery System at a Service Provider facility where it is then installed.
    - Alternate Recovery Facility: Delivery of the Replacement Recovery System to a Service Provider facility where it may be accommodated, within 48 hours after Service Provider receives the Disaster declaration notice.
    - Mobile Data Center: Delivery of a properly equipped vehicle housing the Replacement Recovery System to a destination in the continental United States requested by the Eligible User, within 48 hours after Service Provider receives the Disaster declaration notice.
    - State Facility: Delivery of the Replacement Recovery System to a properly equipped facility located in the continental United States requested by the Eligible User, within 48 hours after Service Provider receives the Disaster declaration notice.
  - Computer Space: Respondents may propose environmentally prepared computer space (“Computer Space), properly equipped to facilitate the installation of a computer system comparable to the Mobile Configuration, to be provided to the Eligible User by any of the following methods at the Eligible User’s option:
    - Service Provider Facility: Access to the Computer Space at a Service Provider facility where the Replacement Recovery System may be accommodated.

- Mobile Coldsite: Delivery of a properly equipped vehicle housing the Computer Space to a destination in the continental United States requested by the Eligible User, within 48 hours after Service Provider receives the Disaster declaration notice.
- Supplemental Office Space: An adequate and reasonable amount of office space in the same Service Provider facility where the Replacement Recovery System or Computer Space is located, properly equipped to facilitate the installation of terminals, which the Eligible User may use to operate that Replacement Recovery System or Computer Space.
- Mobile Work Group Space: Service Provider will commence the delivery of a vehicle properly equipped to accommodate the Mobile Work Group Configuration described in the Schedule, to a destination in the continental United States requested by the Eligible User, within 24 hours after Service Provider receives the Disaster declaration notice.
- Quick Ship Equipment: Delivery of equipment equal to or better than (in all material respects including equipment quality and processing capacity) the Quick Ship Equipment described in the Eligible User's Schedule, to a properly equipped facility in the continental United States requested by the Eligible User within 48 hours after Service Provider receives the Disaster declaration notice.

### **6.2.3 Office Space Requirements**

Eligible Users may require an adequate and reasonable amount of office space in the same facility where the Hot-site, Warm-site, or Cold-site is located that is properly equipped to facilitate the installation of terminals, which the Eligible User may use to operate that site.

Respondent shall detail the availability and circumstances under which the following may be used within their response to the Questions to Vendors as appropriate in each section of questions:

- Raw floor space available
- Environmental controls
- Network connectivity
- Conditioned Power
- Appropriate redundancies
- Physical security
- Space availability as long as needed and scalable or room for large data center needs
  - Appropriate facilities and infrastructure to handle large shipments
- Non-shared space
  - Ability to lock up tapes
  - Ability for Users to install their own tapes
  - Limited Access
- Restroom facilities
- Water and Electricity availability
- Near a transportation hubs
  - Local hotels and restaurants
- Other

### **6.2.4 Network Services**

- Redirect Services: The Network Services and requirements identified in the Eligible User's SOW shall be made available to Eligible User within the timeframe specified in the SOW after receipt of a Disaster declaration, based on then current availability on Service Provider's Global Network (SGN), in accordance with the Multiple Disaster Procedures. All redirect circuits are connected between the Service Provider's network point and coordinated by



Service Provider (“point of presence”) and the Destination Point or between Service Provider Recovery Centers. Once the Eligible User has been switched onto a circuit on the SGN, the Services will be available on a 24 hour, 7 days per week basis (excluding downtime attributable to routine and preventative maintenance).

- **Web Redirect Services:** The Network Services identified as Web Redirect offers the Eligible User access to the Internet from the Service Provider’s Recovery Center designated in the Provider’s portfolio of services. The Web Redirect Services shall be made available to the Eligible User within the timeframe specified in the Eligible User’s SOW and after receipt of a Disaster declaration, based on then current availability on the Service Provider’s Network (SPN) in accordance with the Multiple Disaster Procedures defined herein. The Department recognizes that these Web Redirect Services are not provider specific: therefore the Eligible user is responsible for setting up any necessary domain(s) in order to facilitate effective use of the Web Redirect Services. Once the Eligible User has been switched onto the SPN, the Web Redirect Services will be available on a 24-hour, 7- day per week basis (excluding downtime attributable to routine and preventative maintenance).
- **Internet Access Services:**
  - Service Provider’s Internet Access Services will provide the Eligible user with connectivity to the Internet through Internet Access Services subject to the terms and conditions of the agreement between the Eligible User and the Service provider and fully licensed Internet software, if applicable.
  - The Internet is not owned, operated, or managed by, or in any way affiliated with Service Provider or any of Service Provider’s affiliates. The Internet is an international computer network of both Federal and non-Federal inter-operable packet switched data networks. Service Provider cannot and will not guarantee that the Internet Access Services will provide Internet access that is sufficient to meet the Eligible User’s needs. The Eligible User agrees that its use of the Internet Access Service and the Internet is solely at its own risk and is subject to all applicable local, state, national and international laws and regulations.
  - The Service Provider must make available to the Eligible User and the Eligible user shall acknowledge receipt of Service Providers and/or its underlying carriers’ policies and/or rules and regulations (“Policies”) and shall agree to comply with such Policies at all times while utilizing the Internet Access Services. The Eligible user also acknowledges that a breach of any of the Policies may result in the immediate termination of the Internet Access Services without prior notice and Service Provider shall have no liability to the Eligible user for any restriction or termination of the Internet Access Services pursuant to the Eligible User’s violation of the Policies. The Policies may be revised from time to time by Service Provider, which revisions will be communicated to Eligible user in writing, by posting on Service Provider’s website. The Eligible user agrees that the Access Service is provided on an “as is”, “as available” basis without warranties of any kind, either express or implied. The Eligible User agrees that the service Provider has the right, but not the obligation, to remove content from Service Provider’s computer servers which Service Provider, in its sole discretion, determines to be in violation of this agreement or Service Providers underlying carrier(s)’ on-line policy.

**6.2.5 Disaster Recovery Testing Requirements** – Testing shall be used to perform a variety of functions and requirements including, but not limited, to the following:

- Determining the feasibility of the recovery process
- Verifying the compatibility of backup facilities

- Ensuring the adequacy of procedures relating to the various teams working in the recovery process
  - Identifying deficiencies in existing procedures
  - Training of various team managers and members
  - Demonstrating the ability of the organization to recover
  - Providing a mechanism for maintaining and updating the recovery plan
- The Vendor shall provide adequate annual test time and technical assistance as required by the Eligible User. Vendors shall assist agency staff in assuring that the agency's backup operations can be implemented in the vendor's facility at the time of a disaster. Vendors shall provide a variety of test periods and lengths of test time to accommodate multiple testing needs. (e.g. Some users may require one test a year and need 48 hours to conduct the test while others may require 120 hours to complete their testing process. Other users may require multiple test times and choose to test mainframe operations one time and open source during another time.)
    - Service Provider may provide additional optional testing periods such as:
      - Semi-annual
      - Quarterly
      - Monthly
  - The scope of the Eligible User's test(s) will determine the amount of lead time required for performing those tests. Vendors shall make every effort to schedule tests based upon the amount of lead time required for various testing scenarios. Vendors shall provide a scale of hours for test periods.
  - All Tests shall be subject to immediate cancellation or termination, and shall be rescheduled as soon as possible, if and when any other Eligible User declares a disaster and requests use of the Recovery Services being tested.
  - The Eligible User may use certain Recovery Services to test its disaster recovery capability ("Test") for the number of Test Periods stated in the applicable Schedule.
  - Service Provider shall provide technical assistance to assist Eligible User staff in assuring that the Eligible User's backup operations can be implemented in the vendor's Cold-site facility at the time of a disaster.
  - Additional test periods may be offered and shall be subject to availability. Eligible Users that have state-wide field offices will have the ability to add individual Recovery Services and Network Services Agreements, governed under the master Eligible User's Agreement.
  - Respondents shall also include the following information:
    - The number of desktops and seats available to the Eligible User's Disaster Recovery team during testing.
    - The types of tests proposed may include any of the following:
      - Simulation Testing
        - A disaster scenario should take into consideration the purpose of the test, objectives, type of test, timing, scheduling, duration, test participants, assignments, constraints, assumptions, and test steps. Testing can also

include the notification procedures, temporary operating procedures, and back-up and recovery operations.

- During the simulation, the following elements may be thoroughly tested:
  - Hardware
  - Software
  - Personnel
  - Data and voice communications
  - Procedures
  - Supplies and Forms
  - Documentation
  - Transportation
  - Utilities (power, air conditions, heating, ventilation)
  - Alternative site processing

○ Parallel Testing

- This test can be performed in conjunction with the checklist test or simulation test. Historical transactions, such as yesterday's transactions, are processed against the proceeding day's backup files at the contingency processing site or hot-site. All reports produced at the alternate site for the current business date should agree with those reports produced at the existing processing site.

○ Full Interruption Testing

- This test will activate the total disaster recovery plan. The test must provide the following:
  - Adequate scheduled time for testing
  - Testing shall not be scheduled at any critical point in the Eligible User's normal processing cycle (i.e. year-end)
  - Events planned shall at a minimum identify the type of disaster, the extent of the damage, recovery capability, staffing and equipment availability, backup resource availability and time/duration of the test.
  - The test plan shall identify the persons responsible and the time they need to perform each activity.
  - Testing may be conducted in parts in order to identify the workability of each part before attempting a full test.
  - Testing may be conducted before or after normal business hours, or on weekends to minimize disruptions.

○ Combination Testing

Combination testing allows Eligible Users to conduct different test types at the same time. Respondents may provide optional combination testing alternatives to meet the varying needs of the Eligible Users.

○ Remote Testing

Remote Testing allows Eligible Users to conduct tests from their primary facility or from another location without having to travel to the actual test site. Respondents may provide optional remote testing alternatives to meet the varying needs of the Eligible Users.

- Other Test types  
Respondents may propose additional testing options not already discussed.

#### **6.2.6 Facility and Mobile Work Group Space**

- Service Provider will provide fully furnished work positions as defined in the Recovery Services and Network Services Schedules as specified in the Eligible User's SOW.
- Additional test time may be purchased, subject to availability. Eligible Users that have state-wide field offices will have the ability to add individual Recovery Services and Network Services Schedules, governed under the master Eligible User's schedule.

#### **6.2.7 Technology Exchange**

- Upon the Eligible User's request, Service Provider will provide a list of computer and communications equipment that is then currently available to enhance the Hot-site Configuration or Mobile Configuration.
- The Eligible User may exchange certain components of its configuration for hardware representing newer technology, by giving written notice to Service Provider and signing an appropriate Addendum to the applicable agreement.
- Upon the effective date of this exchange, the Monthly or Annual Fees due under that agreement may increase in accordance with state contract discount rates and based upon the difference between (a) Service Provider's then prevailing Monthly or Annual Fees for the new hardware selected, and (b) an allocated portion of the prior Monthly or Annual Fees covering the components that were replaced.

#### **6.2.8 Optional Planning Services**

Service Provider may include either client-based or web-based recovery planning software for developing and maintaining the Disaster Recovery Plan. If the Respondent proposes Planning Software, the following shall apply:

- Planning Software Performance Metrics
  - Service Level — The disaster recovery planning software will be available 99.5% of scheduled uptime 24x7, 365 days a year.
  - Measurement Period — Monthly.
  - Performance Credit — Performance credit for this service level when in violation will be calculated as follows: (Service level goal minus actual Service Level for the period) multiplied by the base service fees for the month.
    - Example: [99.5% - Actual Availability = %Not Met] X [Monthly Fee] = Credit Amount
  - Service levels and performance credits shall apply beginning with the third full calendar month after services begin.

The Respondent may offer optional planning services and tools to assist Eligible Users with their disaster recovery plans. Examples of some types of plans that may be offered are as followed:

- Tabletop Exercises
  - This type of exercise/test is a discussion-based exercise where personnel meet in a classroom setting or in breakout groups to discuss their roles during an emergency and their responses to a particular emergency situation. A facilitator presents a scenario and

asks the exercise participants questions related to the scenario, which initiates a discussion among the participants of roles, responsibilities, coordination, and decision-making. It is discussion-based only and does not involve deploying equipment or other resources.

- **Structured Walk-through Testing**
  - Disaster recovery team member will meet to verbally walk through the specific steps of each component of a disaster recovery process as documented in the disaster recovery plan. The purpose of the structured walk-through test is to confirm the effectiveness of the plan and to identify gaps, bottlenecks or other weaknesses in the plan.
  
- **Checklist Testing**
  - A checklist test determines if sufficient supplies are stored at the backup site, telephone number listings are current, quantities of forms are adequate, and a copy of the recovery plan and necessary operational manuals are available. The recovery team will review the plan and identify key components that should be current and available. The checklist test will ensure that the Eligible User complies with the requirements of the disaster recovery plan.
  
  - The checklist test and the structured walk-through test may be combined during initial testing to determine modifications to the plan before attempting more extensive testing.
  
- Other plan testing (where coordination is identified, i.e., COOP, BCP)

**6.2.9 Equipment Growth**

- Upon the anniversary of each contract year during the term of this contract, upon the applicable Eligible User’s request, Service Provider will prepare an amendment to the applicable Recovery Services agreement, increasing the contracted-for MIPS, memory and or disk capacity contracted for on the applicable Recovery Services agreement as of its Commencement Date, by up to ten percent (10%), at no additional Monthly Fee.
  
- Such increase in contracted capacity shall be cumulative, if capacity is not utilized in a prior contract year(s), but is subject to availability in Service Provider’s then installed inventory, and shall become effective upon the execution amendment to the applicable Recovery Service agreement. If an Eligible User’s requested increase is above their available growth percentage, Service Provider will guarantee any applicable price increase is not greater in overall percentage than that of the difference (i.e. 10% free growth available, need 15%, the applicable overall monthly price increase will not exceed 5%).

**6.2.10 Minimum Recovery Services Deliverables**

<b>Deliverable</b>	<b>Due Date</b>
Recovery Services Equipment Schedule	<b>Agreed upon between the Customer and Service Provider, Schedule to be attached to the SLA upon acceptance and signature.</b>
Test Time	<b>Annually based on the total time defined by the Eligible User and documented in their schedule.</b>

Recovery Services Schedule Amendment	<b>At any point except at such time when Customer is experiencing a disaster.</b>
Network Services Schedule	<b>Agreed upon between the Customer and Service Provider; Schedule to be attached to the SLA upon acceptance and signature.</b>
Network Services Schedule Amendment	<b>At any point except at such time when Customer is experiencing a disaster.</b>

### 6.2.11 Recovery Services Responsibilities

- Eligible User Responsibilities
  - By signing an agreement or any Addendum to an agreement, the Eligible User warrants that the Location specified in that agreement is not at that time experiencing a Disaster.
  - The Eligible User may declare a Disaster by having one of its designated representatives give notice to the Service Provider stating that a Disaster occurred, identifying the affected Location as defined in the Recovery Services agreement, and specifying which Recovery Services the Eligible User believes will be required.
  - In order for Service Provider to provide support to the Eligible User for a scheduled Test, all Test plans must be provided to Service Provider at least three (3) weeks prior to the Test date.
- Significant Changes

Service Provider may change the Recovery Resources and shall give written notice to the Eligible User at least 60 days before making any significant change that might substantially and adversely impact the Eligible User. The Eligible User shall then have an adequate and reasonable number of free additional Test Periods to test the affected Recovery Services. If, in the Eligible User's reasonable judgment, any such change substantially and adversely impacts the Eligible User to the extent that the Eligible User cannot use the affected Recovery Services, then the Eligible User may terminate the affected Recovery Services by giving written notice to Service Provider within ten (10) days after the Eligible User first uses the affected Recovery Services for either a Disaster or Test.
- Standard Procedures
  - Both Service Provider and Eligible User shall comply with these Service Provider policies in all material respects and shall use all Recovery Resources in accordance with manufacturer specifications.
  - The Eligible User must notify Service Provider of Test Period cancellation within 45 days before the scheduled date. Otherwise, time will be applied against the Eligible User's annual allotment of Test Periods unless Service Provider is able to reschedule the cancelled Test Period(s) with another Eligible User.
- Special Procedures

The Eligible User shall be responsible for any additional expenses reasonably incurred by Service Provider in implementing the Eligible User's special procedures for any special data protection or other security procedures.
- Mobile Resources

- Title to all of the Recovery Resources used to provide Mobile Recovery Services (“Mobile Resources”), wherever located, shall remain in Service Provider or its supplier, except for any Quick Ship Equipment as to which the Eligible User properly exercises its purchase option, if any, described in the applicable agreement.
- With respect to any Mobile Resources for which the destination is not a Service Provider facility, (a) the Eligible User shall obtain or provide, at the Eligible User’s expense, all permits, landlord consents and other authorizations, and all communications, power and other utility lines and equipment, needed to possess, locate or use the Mobile Resources at that destination, (b) the Eligible User shall be responsible for the security of the Mobile Resources at that destination, (c) the Eligible User shall not relocate the Mobile Resources without Service Provider’s prior written consent which will not be unreasonably withheld, (d) when the Eligible User’s use or right to use the Mobile Resources during a Disaster or Test ends, Eligible User shall comply with Service Provider’s return delivery or shipment instructions, and (e) if the Mobile Resources do not include a Service Provider vehicle, then the Eligible User shall provide a proper operating environment for the Mobile Resources.
- Access and Use Procedures
  - The Eligible User shall have priority rights of access to and use of applicable Priority Resources that are not then being used by other affected Eligible Users who previously declared disasters. Use of such Priority Resources is exclusive for as long as State is entitled to use them as defined in both the agreement for Network and Disaster Recovery Selected Services.
  - The Eligible User and all other affected Eligible Users shall have equal rights of access to and use of applicable Shared Resources, irrespective of the order in which disasters occur or are declared. Use of Shared Resources may be exclusive at times, but remains subject to the possible need for shared or allocated use with other affected Eligible Users.
  - If applicable Priority Resources and applicable Shared Resources are both available, the Eligible User may choose which type to use.
  - The Eligible User shall cooperate with Service Provider and all other affected Eligible Users as reasonably required under the circumstances, including coordinating the efficient use of Recovery Resources, to avoid or minimize the need for shared or allocated use of Shared Resources, and to implement any necessary plans for shared or allocated use of Shared Resources.
- Service Provider Responsibilities
  - Test
    - Promptly after execution of an agreement, Service Provider shall either notify the Eligible User of available times to schedule a training workshop at a Service Provider facility or provide instructions to the Eligible User to conduct a computer based training workshop.
    - During each Test, Service Provider’s Support Staff shall provide supplies and support to the Eligible User as required in their SOW, subject to availability.
    - Upon receipt of Eligible User’s Test plan, Service Provider will then assign a Service Provider technical coordinator to review the Eligible User’s Test plan and act as project manager to coordinate Test support activities.

- Service Provider shall provide the Eligible User with access to the Network Services to conduct Test(s) in conjunction with the Recovery Services as defined on the applicable Recovery Services/Network agreement with the Eligible User.
  - Disaster
    - When a Disaster has been declared, Service Provider will follow the Eligible User’s reasonable declaration procedures as provided to Service Provider in the Disaster Declaration plan.
    - Service Provider will provide the Selected Recovery Services to the Eligible User as defined by the Eligible User in the agreement.
    - Whenever the Eligible User uses Recovery Services during a Disaster, Service Providers Support Staff (consisting of operations, communications, security, transportation, systems software and Eligible User support personnel, as appropriate) shall provide comprehensive support to the State on a 24-hour-a-day, 7-day-a-week basis, as needed.
    - To facilitate the Eligible User’s use of the Recovery Services during a Disaster, Service Providers Support Staff shall assist the Eligible User in pre-testing the Eligible User’s operating systems, network control programs and communications circuits. During a Disaster, Service Providers Support Staff also shall assist the Eligible User in contacting vendors and in obtaining and installing additional or replacement equipment.
    - Eligible Users shall have access to the Network Services for Disaster Recovery Purposes, in accordance with Service Provider’s obligations as defined in the Agreement.
    - “Disaster Recovery Purposes” means any use of the Network Services by Eligible User: (i) while Eligible User is experiencing a Disaster (ii) which connectivity facilitates Eligible User’s recovery during a Disaster; or (iii) to conduct a Test(s). Any other use of the Network Services by the Eligible User shall constitute a material breach of the Contract for which Service Provider may terminate the Contract by providing five (5) days written notice, Eligible User shall have access to the Services for the period of no more than six (6) weeks during a Disaster.
- Maintenance and Use of Recovery Resources
 

Service Provider is responsible for ensuring the facilities and equipment used for the Recovery Services (“Recovery Resources”) are properly maintained.

  - Maintenance
 

Service Provider shall maintain vendor-specified proper operating environments at its facilities and in its vehicles used to provide the Recovery Services. Service Provider shall adhere to vendor-recommended procedures and policies for proper maintenance of the Recovery Resources, including necessary remedial maintenance and regularly scheduled preventive maintenance. Service Provider warrants to the Eligible User that the Recovery Resources shall be maintained in a state of readiness at all times, consistent with Service Provider’s obligations under this Contract.
  - Significant Changes
 

Service Provider may change the Recovery Resources and shall give written notice to the Eligible User at least 60 days before making any significant change that might substantially and adversely impact the Eligible User. The Eligible User shall then have



an adequate and reasonable number of free additional Test Periods to test the affected Recovery Services. If, in the Eligible User's reasonable judgment, any such change substantially and adversely impacts the Eligible User to the extent that Eligible user cannot use the affected Recovery Services, then the Eligible User may terminate the affected Recovery Services by giving written notice to Service Provider within ten (10) days after Eligible User first uses the affected Recovery Services for either a Disaster or Test.

- Standard Procedures

- Service Provider shall maintain reasonable and uniform policies regarding security, safety, scheduling, operations and other procedures for accessing and using the Recovery Resources during disasters and tests. These policies may appear in Service Provider's User's Guides and in other written documents provided by Service Provider to the Eligible Users from time to time. Policies for tests include advance scheduling and cancellation requirements.
- Both Service Provider and Eligible User shall comply with these policies in all material respects and shall use all Recovery Resources in accordance with manufacturer specifications.

- Special Procedures

- If the Eligible Users gives written notice to Service Provider describing any special data protection or other security procedures used by the Eligible User, then Service Provider shall use commercially reasonable efforts to help implement those procedures whenever the Eligible User is using the Recovery Resources.
- The Eligible User shall be responsible for any additional expenses reasonably incurred by Service Provider in implementing Eligible User's special procedures as specified in a written agreement.

- Mobile Resources

Title to all of the Recovery Resources used to provide Mobile Recovery Services ("Mobile Resources"), wherever located, shall remain in Service Provider or its supplier, except for any Quick Ship Equipment as to which the Eligible User properly exercises its purchase option, if any, described in the applicable agreement.

If any Mobile Resources are provided by a third party under contract with Service Provider and that contract is terminated, then Service Provider will use commercially reasonable efforts to replace the Mobile Resources. If the Service Provider is unable to replace the Mobile Resources, then the Service Provider may terminate the applicable Recovery Services upon 90 days prior notice to the Eligible User. In the event the Eligible User is experiencing a Disaster and utilizing such Mobile Resources at such time as when the Service Provider receives notice of termination from such third party vendor, the Service Provider will arrange for the Eligible User's continued use of the affected Mobile Resources for the duration of the Disaster, or if such continued usage cannot be arranged, Service Provider will arrange for suitable replacement equipment to be provided to the Eligible User at no additional cost.

- Priority Resources and Shared Resources

All Recovery Resources shall be available on a priority use basis ("Priority Resources") except for those designated by Service Provider as available on a shared use basis ("Shared Resources"). Service Provider's designations of Shared Resources shall be made in its reasonable discretion and shall be subject to change without notice.

## 6.2.12 Multiple Disaster Protection

### ○ Multiple Disasters

The Eligible User's rights of immediate and exclusive use of the Recovery Services, as provided in the Eligible User's agreement shall be subject to the possibility that one or more other Eligible Users ("other affected Eligible Users") could declare a disaster at the same time as (or before or after) the Eligible User and require use of the same Recovery Resources at the same time as the Eligible User ("Multiple Disaster"). The following provisions are intended to avoid or minimize contention for Recovery Resources during Multiple Disasters.

### ○ Access and Use Procedures

- Access to and use of Recovery Resources during multiple disasters shall depend upon whether the Recovery Resources are Priority Resources or Shared Resources and, with respect to Priority Resources, in the order in which disasters are declared. Service Provider shall maintain records of its receipt of disaster declarations, which shall be the exclusive basis for determining the order in which disasters are declared.

- If a Multiple Disaster is widespread or extreme, then, notwithstanding the foregoing provisions, Service Provider may implement emergency procedures that are necessary, in Service Provider's reasonable judgment, to allocate Recovery Resources in order to satisfy the critical needs of affected Eligible Users, applicable national security interests and comparable concerns.

### ○ To lower the probability of a Multiple Disaster, Service Provider shall comply with the following terms

- No other Eligible User shall be granted any greater rights of access to or use of the Recovery Resources than are granted to the State under this Contract.

- No Contract to provide use of any Recovery Resources shall be entered into at a time when the State location to be serviced is then currently experiencing a disaster.

### ○ For Center-Based Recovery Services, Service Provider also shall comply with the following:

- To discourage unnecessary disaster declarations, the Contractor may charge the Eligible User Disaster Declaration Fees, as provided in the Eligible User's agreement. Disaster Declaration Fees may be charged whenever an Eligible User declares a disaster.

- In the event that an Eligible User declares a Disaster, a maximum of twenty-five percent (25%) of the Disaster Declaration Fee shall be applied toward each of the first four (4) days of the Daily Usage Fee, provided that the total amount applied does not exceed the Disaster Declaration Fee.

- To discourage unnecessary use of the Recovery Resources, Daily Usage Fees, may be charged for use of the Recovery Resources other than for tests.

### ○ Crisis Management

Whenever Service Provider learns of an approaching storm or other situation that might cause a Multiple Disaster, Service Provider shall monitor the situation and use commercially reasonable efforts to coordinate contingency plans with all potentially affected Eligible Users. Contingency plans must have been developed by the Eligible

User either separately or with the Service Provider in advance and the Service Provider must have a copy on file that includes, at a minimum, the following:

- Damage Assessment and Control Plan
- Crisis Team Member Role Assignment
- Crisis Command Centre Location and Operation
- Media Management Guidelines
- Legal Decisions
- Human Resource Management
- Effective Information Dissemination
- Action Initiation, Management and Logging
- Crisis Management Requirements Analysis
- Crisis Management Planning Workshops (held prior to a disaster)
- Crisis Management Scenario Testing Workshops (held prior to a disaster)
- Crisis Management Implementation & training
- Stakeholder and Media Communications Plans
- Crisis Management Plan maintenance & review.

**6.2.13** Cloud Computing – Service Providers may provide cloud computing solutions for IT Disaster Recovery. Solutions proposed shall adhere to the terms and standards of this solicitation and must include the following:

- A complete description of the solution(s) provided
- Security measures provided to protect data
- Meet the Standards and Policies included in 6.2.15 and 6.2.16

**6.2.14** Communication Policies

Respondents shall provide any communication policies already in place and may provide assistance or enhancements to the Eligible User communication plans. Communication assistance may come in the form of the following:

- Alerts before a disaster
  - Email Communications
  - Voice Messages
- Communications after a disaster

**6.2.15** Standards – The State of Florida utilizes the following standards, which must be incorporated into any proposal submitted by a respondent.

- [HIPAA](#)
- [NIST](#) (SP800-34, Rev. 1)
- [ICS](#)

**6.2.16** Policies and Plans – The State of Florida also has in place the following documents that respondents must refer to.

- [ITDRP](#)
- [Guides for Risk Management in the State of Florida](#)
- [2008 State of Florida Risk Assessment](#)

**6.2.17** Standard Support

Contractors shall provide the following levels of support under the Contract:

- Inside delivery, with buyer set-up and installation
- Standard intellectual property owner's software warranty
- 30-day money back guarantee (after acceptance criteria noted in Section 5.2), return to Contractor, with no shipping charges or restocking fee or comparable charges
- Installation advisory support – help with installation and updating of standalone applications or products in a network environment.
- Corrective support – to resolve identifiable and reproducible software product problems and to help customers identify problems that are difficult to reproduce; includes assistance with trouble-shooting and with setting configuration parameters.
- Escalation management – Establish escalation procedures and enlist specialized expertise from Contractor and selected third parties.
- Electronic software information – Provide access to software patches, a symptom-solution database, product descriptions, specifications, and technical literature.
- Coverage windows – minimum of 7:00 a.m. – 6:00 p.m. EST Monday – Friday, excluding holidays.
- After hours contact for emergency orders (see Section 5.8 for details).

#### **6.2.18 Optional Support**

Optional Support may be offered such as:

- Warranty upgrades. Warranty upgrade may be purchased at time of solution purchase or during the warranty period
- Software product and documentation updates
- Software Training (for individual products or product suites directly related to Disaster Recovery)
- Manufacturer provided installation
- Consulting Services (limited to customizations of products or services offered or directly related to products sold).
- Additional coverage options such as:
  - 24/7/365
  - Extended hours
- Other

Optional support levels resulting in increased cost to Customers shall be clearly and separately identified on the Contractor's authorized product and price list. Integrated components shall carry the same support level and warranty provisions as the system. Optional support shall also be offered at the same percentage discount as the awarded category of items that the optional support is associated with.

#### **6.3 Questions for Vendors**

Section 7.16 contains a list of questions to which all Respondents must provide a response as part of the Vendor's proposal. Respondents must address all sections of the questionnaire. Failure to provide a complete reply may result in rejection of the response. Responses will be evaluated to determine the Vendor's ability to meet the overall needs of the state. Directions for providing a response are identified in Section 3.10 and are noted throughout the questionnaire.

## Section 7.0

### Forms, Attachments, and Worksheets

The Forms, Attachments, and Worksheets are located in and are downloadable from the MyFloridaMarketPlace Sourcing Tool.

#### Contents

7.1	Certification Table – Signed	Mandatory
7.2	Price Sheet	Mandatory
7.3	Savings/Price Reductions	Mandatory
7.4	Contact Information	Mandatory
7.5	Ordering Instructions	Mandatory
7.6	Certification of Drug-Free Workplace Program (PUR 7009)	Mandatory
7.7	References Form	Mandatory
7.8	STC Change Form	Review
7.9	State of Florida Vendor Responsibility Questionnaire	Mandatory
7.10	MyFloridaMarketPlace Electronic Invoicing Requirements	Review
7.11	Emergency Situations form	Mandatory
7.12	Vendor Checklist	Review
7.13	STC Quarterly Report Form	Review
7.14	Sample Aravo Template for line item catalogs	Review
7.15	Authorized Dealer form	Mandatory
7.16	Questions for the Vendor	Mandatory
7.17	Punch-Out Capability Questionnaire	Review
7.18	Instructions to Vendors	Review
7.19	Purchase Orders/Invoices	Mandatory