

**PARTICIPATING ADDENDUM**

to the

NASPO ValuePoint Cooperative Procurement Program  
COMPUTER EQUIPMENT MASTER AGREEMENT  
Administered by the State of Minnesota

Master Agreement No: MNWNC-119

Microsoft

And

The State of Florida

Alternate Contract Source No. 43211500-WSCA-15-ACS

Page 1 of 15

1. Scope: The State of Minnesota, Department of Administration, Materials Management Division publicly conducted a Request for Proposal on behalf of the State of Minnesota and the National Association of State Procurement Officials Cooperative Procurement Program (NASPO ValuePoint) resulting in Master Agreement number MNWNC-119. The Master Agreement led by the State of Minnesota along with a multi-state sourcing team, was created for use by state agencies and other entities that are authorized by that state's statutes to utilize cooperative agreements, upon written approval of the State's chief procurement official.

The Master Agreement for computer equipment (desktops, laptops, tablets, servers, and storage, and ruggedized devices, including related peripherals & services) identifies the product bands awarded to the Contractor.

This Participating Addendum (Addendum) is made and entered into as of the Effective Date by and between the State of Florida (Participating State) and Microsoft (Contractor). This Addendum allows for purchase of computer equipment from the Master Agreement. This Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contractor under the terms of the Master Agreement.

2. Participation: Use of specific NASPO ValuePoint cooperative agreements by eligible users authorized by a Participating State's statutes are subject to the prior approval of the respective State Chief Procurement Officer. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Officer.

3. Order of Precedence:

In the event of a conflict, the following documents shall have priority in the order set forth below:

- a. This Participating Addendum;
- b. Exhibit 2, PUR 1000;
- c. Exhibit 1, Minnesota NASPO ValuePoint Master Agreement No. MNWNC-119

4. Participating State Modifications or Additions to Master Agreement:

A. Upon execution of this Addendum, all eligible users may purchase products and services under contract using the Florida alternate contract source number 43211500-WSCA-15-ACS.

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Microsoft

And

The State of Florida

Alternate Contract Source No. 43211500-WSCA-15-ACS

Page 2 of 15

Eligible users acknowledge and agree to be bound by the terms and conditions of the Master Agreement except as otherwise specified in this Addendum.

1. The following are modifications to the Master Agreement:

- a. PUR 1000 Form: General Contract Conditions, is attached hereto and incorporated herein as Exhibit 2.
- b. Discriminatory Vendors. A vendor placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not 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.
- c. Effective Date: This Addendum shall become effective on the last date signed below and is coterminous with Exhibit 1, unless terminated earlier by the Participating State.
- d. Vendor Registration and Transaction Fees: In order to complete any transaction between an eligible user and the Contractor, the Contractor must be registered with the Department of State, Division of Corporations ([www.sunbiz.org](http://www.sunbiz.org)) and in [MyFloridaMarketPlace](http://MyFloridaMarketPlace). Section 287.042(1)(h), Florida Statutes, and Rule 60A-1.031, Florida Administrative Code, is hereby incorporated by reference. All transactions are subject to a transaction fee pursuant to the rule.
- e. Purchases: In order to procure products and services hereunder, eligible users shall issue purchase orders or use a purchasing card which shall reference Florida alternate contract source number 43211500-WSCA-15-ACS. Eligible users are responsible for reviewing the terms and conditions of this Addendum including all Exhibits.
- f. Compliance with Laws: The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to Microsoft as an original equipment manufacturer, including those of federal, State, and local agencies having jurisdiction and authority. Microsoft Additional Eligible User Terms: If any additional ordinance, rule, or other local governmental authority requires additional contract language before an eligible user can make a purchase under this Addendum, the eligible user is responsible for entering a separate agreement with the Contractor and capturing that additional contract language therein.
- g. Provisions of section 287.058, Florida Statutes: The provisions of section 287.058(1)(a)(c) and (g), Florida Statutes, are hereby incorporated by reference.

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Master Agreement No: MNWNC-119

Microsoft

And

The State of Florida

Alternate Contract Source No. 43211500-WSCA-15-ACS

Page 3 of 15

- h. The State of Florida's performance and obligation to pay under this Addendum is contingent upon an annual appropriation by the Legislature. The vendor shall comply with section 11.062, Florida Statutes and section 216.347, Florida Statutes, prohibiting use of funds to lobby the Legislature, Judicial, or state agencies.
- B. Contract Document: This Addendum and its Exhibits set forth the entire agreement between the parties with respect to the subject matter of the contract.
- C. Intellectual Property: The parties do not anticipate that any intellectual property will be developed as a result of this Addendum. However, any intellectual property developed as a result of this Addendum will be governed by a separate agreement signed by both parties. This provision will survive the termination or expiration of the contract.
- D. Employment Eligibility Verification: Pursuant to State of Florida Executive Orders Nos.: 11-02 and 11-116, Contractor is required to utilize the U.S. Department of Homeland Security's EVerify system to verify the employment of all new employees hired by the Contractor during the contract term. Also, Contractor shall require resellers/partners performing work or providing services under this Addendum to utilize the E-Verify system to verify employment of all new employees hired by the reseller/partner during the Addendum term.
- E. Price List/Preferred Price: The Contractor's price list will be the same as the WSCA-NASPO price list, and the Department will post a link on the Department's website to the price list posted on the WSCA-NASPO website. Contractors are encouraged to provide special pricing and/or tiered discount rates applicable to State of Florida Eligible Users wherever possible. Paragraph 4(b) of the PUR1000 is not applicable.
- F. Scrutinized Company List: In executing this Addendum, Contractor certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, Florida Statutes. Pursuant to subsection 287.135(5), Florida Statutes, Contractor agrees the Participating State may immediately terminate this Addendum for cause if the Contractor is found to have submitted a false certification or if Contractor is placed on the Scrutinized Microsoft

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NASPO ValuePoint Cooperative Procurement Program  
COMPUTER EQUIPMENT MASTER AGREEMENT  
Administered by the State of Minnesota

Master Agreement No: MNWNC-119

Microsoft

And

The State of Florida

Alternate Contract Source No. 43211500-WSCA-15-ACS

Page 4 of 15

Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List during the term of the Addendum.

- G. Orders: Any Order placed by eligible users for a product and/or service available from the Master Agreement shall be deemed to be a sale under and governed by the prices and other terms and conditions of the Master Agreement and this Addendum.
1. The Contractor agrees to meet the following requirements:
    - a. Provide appropriate contact information for eligible users to use for product and/or service inquiries and purchases, as well as, the most up-to-date product/service offering the Contractor is authorized to provide in accordance with the Master Agreement; and
    - b. If orders are to be sent to resellers/partners for fulfillment then the Contractor is responsible for providing and updating this list of authorized resellers/partners for use to the Participating State/Entity.
  2. Contractor must be able to accept purchase orders via fax, e-mail, or cXML as identified in H.1 below.
- H. Electronic Invoicing: The Contractor shall supply electronic invoices in lieu of paper-based invoices for those transactions processed through the MyFloridaMarketPlace (MFMP) within ninety (90) days from Addendum effective date. Electronic invoices shall be submitted to the agency through the Ariba Network (AN) in one of three mechanisms as listed below:
1. cXML (commerce eXtensible Markup Language)  
This standard establishes the data contents required for invoicing via cXML within the context of an electronic environment. This transaction set can be used for invoicing via the AN for catalog and non-catalog goods and services. The cXML format is the Ariba preferred method for e-Invoicing.
  2. EDI (Electronic Data Interchange)  
This standard establishes the data contents of the Invoice Transaction Set (810) for use within the context of an Electronic Data Interchange (EDI) environment. This transaction set can be used for invoicing via the AN for catalog and non-catalog goods and services.
  3. PO Flip via AN

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And

The State of Florida

Alternate Contract Source No. 43211500-WSCA-15-ACS

Page 5 of 15

The online process allows Contractors to submit invoices via the AN for catalog and noncatalog goods and services. Contractors have the ability to create an invoice directly from their Inbox in their AN account by simply "flipping" the PO into an invoice. This option does not require any special software or technical capabilities.

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 third party provider of MFMP, a state contractor, 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.

The Contractor will work with the MFMP management team to obtain specific requirements for the electronic invoicing if needed.

- I. **Contract Quarterly Reports:** The Contractor shall submit a Quarterly Report in the required format electronically to the Participating State/Entity within 30 days of the end of the quarter. The Participating State/Entity reserves the right to require the Contractor to provide additional reports within 30 days written notice. Failure to provide the Quarterly Report or other reports requested by the Participating State/Entity may result in the Contractor being found in default subject to the Defaults & Remedies provision in the Master Agreement and may result in termination of this Addendum.

Sales will be reviewed on a quarterly basis. Should no sales be recorded in two consecutive contract quarters, the Participating State/Entity may terminate this Addendum.

- J. **Business Review Meetings:** The Participating State/Entity reserves the right to schedule business review meetings as frequently as necessary but no more frequently than every 30 days, unless the parties agree otherwise in writing. The Participating State/Entity will provide the format for the Contractor's agenda. Prior to the meeting, the Contractor shall submit the completed agenda to the Participating State/Entity for review and acceptance. The Contractor Microsoft

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NASPO ValuePoint Cooperative Procurement Program  
COMPUTER EQUIPMENT MASTER AGREEMENT  
Administered by the State of Minnesota

Master Agreement No: MNWNC-119

Microsoft

And

The State of Florida

Alternate Contract Source No. 43211500-WSCA-15-ACS

Page 6 of 15

shall address the agenda items and any of the Participating State/Entity's additional concerns at the meeting. Failure to comply with this section may result in the Contractor being found in default subject to the Defaults & Remedies provision in the Master Agreement and Addendum termination.

- K. Commitment to Diversity in Government Contracting: The State of Florida is committed to supporting its diverse business industry and population through ensuring participation by minority-, women-, wartime-, and service-disabled veteran business enterprises in the economic life of the State. The State of Florida Mentor Protégé Program connects minority-, women-, wartime-, 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 or [osdhelp@dms.myflorida.com](mailto:osdhelp@dms.myflorida.com).

Upon request, the Contractor shall report to the Office of Supplier Diversity spend with certified and other minority business enterprises. These reports will include the period covered, the name, minority code and Federal Employer Identification Number of each minority vendor utilized during the period. Commodities and services provided by the minority business enterprise, and the amount paid to each minority vendor on behalf of each purchasing agency ordering under the terms of this Addendum.

- L. Resellers/Partners: The Contractor may use resellers/partners in order to provide computer equipment and services. All resellers/partners shall be the direct responsibility of the Contractor. The Contractor is responsible for all liability, terms and conditions within Master Agreement and this Addendum. The Contractors resellers/partners' participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement and this Addendum. If a reseller/partner is authorized to conduct business on behalf of the Contractor and the reseller/partner is to receive compensation from the Contractor for its services, then any dispute between the Contractor and the reseller/partner shall be resolved between the Contractor and the reseller/partner. The State of Florida is not a party to any agreement entered into between the Contractor and its resellers/partners. The Contractor shall be responsible to report all contract sales (and pay any associated MFMP transaction fees), Microsoft including those of any such resellers/partners and shall ensure that all such resellers/partners meet the following requirements:

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Master Agreement No: MNWNC-119

Microsoft

And

The State of Florida

Alternate Contract Source No. 43211500-WSCA-15-ACS

Page 7 of 15

- Have an ACTIVE Registration with the Florida Department of State, Division of Corporations ([www.sunbiz.org](http://www.sunbiz.org))
- Registered in the MFMP Vendor Information Portal (<https://vendor.myfloridamarketplace.com>)
- Not be on the State of Florida's Convicted, Suspended, or Discriminatory lists [http://www.dms.myflorida.com/business\\_operations/State\\_purchasing/vendor\\_information/convicted\\_suspended\\_discriminatory\\_complaints\\_vendor\\_lists](http://www.dms.myflorida.com/business_operations/State_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists)
- Have a copy of e-Verify Status on file
- Have a current W-9 filed with the Florida Department of Financial Services (<https://flvendor.myfloridacfo.com>)

M. Primary Contacts: The primary government contact individuals for this Addendum are as follows (or their named successors):

**Contractor**

|           |   |
|-----------|---|
| Name      | Maria Stinson                                       |
| Address   | Microsoft<br>One Microsoft Way<br>Redmond, WA 98052 |
| Telephone | 425-538-2867  |
| E-mail    | marstin@microsoft.com                               |

**Participating Entity**

|           |  |
|-----------|--|
| Name      | Jerilyn Bailey   |
| Address   | Florida Department of Management Services<br>4050 Esplanade Way, Suite 360<br>Tallahassee, FL 32399-0950 |
| Telephone | 850-921-4072   |
| E-mail    | jerilyn.bailey@dms.myflorida.com   |

N. Warrant of Authority: Each person signing this Addendum warrants that he or she is duly authorized to do so and to bind the respective party.



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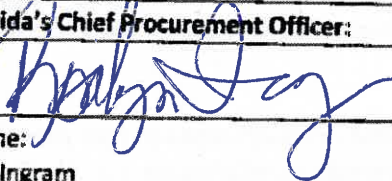
Alternate Contract Source No. 43211500-WSCA-15-ACS

Page 8 of 15

7. Terms. The Participating State is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with applicable law.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by Contractor below.

|  |   |
|--|---|
| <b>Participating State: Florida</b>  | <b>Contractor: Microsoft</b>  |
| By:  | By:  |
| Name: <i>Erin Rock</i>   | Name: <i>Margaret Arakawa</i>   |
| Title: <i>Deputy Secretary</i>   | Title: <i>GM Windows Device</i>   |
| Date: <i>8-17-15</i>   | Date: <i>8/12/15</i>  |

|   |
|---|
| <b>Florida's Chief Procurement Officer:</b>   |
| By:  |
| Name: <i>Roz Ingram</i>   |
| Title: <i>Director of State Purchasing and Chief Procurement Officer</i>                |
| Date: <i>8/17/15</i>  |

Please email fully executed PDF copy of this document to [PA@naspovaluepoint.org](mailto:PA@naspovaluepoint.org) to support documentation of participation and posting in appropriate data bases.



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Alternate Contract Source No. 43211500-WSCA-15-ACS

Page 8 of 15

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IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by Contractor below.

|                                     |                              |
|-------------------------------------|------------------------------|
| <b>Participating State: Florida</b> | <b>Contractor: Microsoft</b> |
| By:                                 | By:                          |
| Name:                               | Name:                        |
| Title:                              | Title:                       |
| Date:                               | Date:                        |

|   |
|---|
| <b>Florida's Chief Procurement Officer:</b>                             |
| By:   |
| Name:<br>Roz Ingram   |
| Title:<br>Director of State Purchasing and Chief<br>Procurement Officer |
| Date:   |

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**State of Florida  
PUR 1000  
General Contract Conditions**

**Contents**

1. Definitions.
2. Product Version.
3. Price Changes Applicable only to Term Contracts.
4. Packaging.
5. Safety Standards.
6. Americans with Disabilities Act.
7. Literature.
8. Transportation and Delivery.
9. Installation.
10. Risk of Loss.
11. Transaction Fee.
12. Invoicing and Payment.
13. Taxes.
14. Governmental Restrictions.
15. Lobbying and Integrity.
16. Suspension of Work.
17. Changes.
18. Renewal.
19. Antitrust Assignment
20. Security and Confidentiality.
21. Contractor Employees, Subcontractors, and Other Agents.
22. Warranty of Authority.
23. Warranty of Ability to Perform.
24. Notices.
25. Leases and Installment Purchases.
26. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).
27. Products Available from the Blind or Other Handicapped.
28. Modification of Terms.
29. Cooperative Purchasing.
30. Waiver.
31. Annual Appropriations.
32. Execution in Counterparts.
33. Severability.

**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 includes the NASPO ValuePoint Master Agreement number MNWNC-119 and any agreement that is completed under this Participating Addendum. The parties to the Contract will be the Customer and Contractor and/or Reseller.

(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).

**2. Product Version.** Purchase orders shall reference the appropriate manufacturer’s product contracted for from the NASPO Product Schedule.

**3. 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) Sales Promotions. 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.

(c) Equitable Adjustment. The parties may agree to 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. 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.

**5. 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.

**6. 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.

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

**8. 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 ten (10) days after receiving a purchase order, shall notify the Customer of any potential delivery delays.

**9. 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.

**10. 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.

**11. 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.

**Transaction fee of one percent (1.0%)** will be calculated on the completed quarterly sales to the end user by the Authorized Device Resellers under the Master agreement. Fee will be based of the Net MSRP value of the sale.

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.

**Microsoft will pay the Transaction Fee to Florida to be received no later than 45 days after the end of a Quarter.**

**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.**

**12. 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.

**13. 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.

**14. 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.

**15. 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 lawful 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>).

**16. 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 30 days 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, but Customer will pay for all devices purchased prior to date of suspension.

**17. Changes.** Upon mutual agreement, the Customer and the Contractor may agree, by written order, to 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.

**18. 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.

**19. 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.

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.

**20. 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.

**21. 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.

**22. 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.

**23. 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.

**24. 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.

**25. 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.

**26. 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>.

**27. 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>.

**28. 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.

**29. 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.

**30. Waiver.** The delay or failure by the Customer or Contractor to exercise or enforce any rights under this Contract shall not constitute or be deemed a waiver of the Customer's or Contractor'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.

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

**32. 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.

**33. 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.