



**State Term Contract  
No. 14111700-20-STC  
For  
Disposable Paper**

This Contract is between the State of Florida, Department of Management Services (Department), an agency of the State of Florida and **Cosgrove Enterprises, Inc.** (Contractor), collectively referred to herein as the "Parties."

Accordingly, the Parties agree as follows:

**I. Initial Contract Term.**

The Initial Contract Term shall be for five (5) years. The Initial Contract Term shall begin on December 1, 2020. The Contract shall expire on November 30, 2025 unless terminated earlier in accordance the Special Contract Conditions.

**II. Renewal Term.**

Upon mutual written agreement, the Parties may renew this Contract, in whole or in part, for a Renewal Term not to exceed the Initial Contract Term, pursuant to the incorporated Special Contract Conditions.

**III. Contract.**

As used in this document, "Contract" (whether or not capitalized) shall, unless the context requires otherwise, include this document and all incorporated Attachments, which set forth the entire understanding of the Parties and supersedes all prior agreements. All modifications to this Contract must be in writing and signed by all Parties.

All Attachments listed below are incorporated in their entirety into, and form part of this Contract. The Contract Attachments shall have priority in the order listed:

- a) Scope of Work, Attachment C
- b) Regional Map, Attachment D
- c) Price Sheet, Attachment E
- d) Special Contract Conditions, Attachment A
- e) Preferred Pricing, Attachment H

State Term Contract No. **14111700-20-STC**  
For  
**Disposable Paper**

**IV. Contract Management.**

**Department's Contract Manager:**

Jeff Dykes  
Division of State Purchasing  
Florida Department of Management Services  
4050 Esplanade Way, Suite 360  
Tallahassee, Florida 32399-0950  
Telephone: (850) 414-6131  
Email: [Jeffery.dykes@dms.fl.gov](mailto:Jeffery.dykes@dms.fl.gov)

**Contractor's Contract Manager:**

Anthony Jeanty  
Cosgrove Enterprises, Inc.  
4225-1 James E Casey Drive  
Jacksonville, Florida 32219  
Telephone: (904) 509-0787  
Email: [tony1@e-cosgrove.com](mailto:tony1@e-cosgrove.com)

**IN WITNESS THEREOF**, the Parties hereto have caused this Contract, which includes the incorporated Attachments, to be executed by their undersigned officials as duly authorized. This Contract is not valid and binding until signed and dated by the Parties.

**Cosgrove Enterprises, Inc.**

**STATE OF FLORIDA,  
DEPARTMENT OF  
MANAGEMENT SERVICES**

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\_\_\_\_\_  
**Anthony Jeanty**

DocuSigned by:  
  
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**Tami Fillyaw**

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**Date:**

11/24/2020 | 9:37 AM EST  
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**Date:**

## **Attachment C SCOPE OF WORK (SOW)**

### **1. Purpose**

To establish a regional State Term Contract for the purchase of disposable paper products consisting of paper towels, toilet tissues, toilet seat covers, disposable wipes/cloths, and facial tissue for Customers.

### **2. Definitions**

**Business Day** - Each day during which the State and its agencies are open for business, from 8:00 a.m. to 5:00 p.m., Monday through Friday.

**Core Products** – Products listed in the Price Sheet which possess an acceptable level of quality, quantity, material, size, and performance for that item and which conform with the Contract Requirements Section of the Scope of Work. Core Products are descriptive and are not an endorsement of that product brand.

**Customer** - An ordering entity including state agencies and eligible users.

**Dockside or Street Delivery** – A delivery service in which the delivery person offloads the ordered products from the delivery vehicle to the loading dock (when available), or on the street level of the delivery location where the receiving party takes possession of the delivered products. Products shall not be left exposed to outside elements.

**Equivalent Products** – Products other than Core Products which are substantially similar to the product descriptions of Core Products. Equivalence is determined by the Department through a comparison of product quantity, quality, material, size, and performance.

**Free on Board (FOB) Destination** – The Contractor, at its own expense and risk, must transport the products to the Customer's specified location. Legal title for the products remains with the Contractor until delivery to the Customer is complete.

**Inside Delivery** – Inside Delivery includes the inside delivery of orders at the location specified by the Customer, which may be screened or subjected to security measures upon delivery.

**Manufacturer's Suggested Retail Price (MSRP)** - The MSRP represents the Manufacturer's recommended retail selling price, list price, published price, or other usual and customary price that would be paid by the purchaser for specific commodities or services without benefit of a Contract resulting from this solicitation. It must be publicly listed, available, and verifiable by the Department.

**Producer Price Index (PPI)** - The PPI is a measure, calculated by the U.S. Department of Labor, Bureau of Labor Statistics, of the average change over time in the selling prices received by domestic producers for their output.

**Region** - Service area (counties) defined in the Regional Map attachment.

### **3. Recycled and Climate Friendly Products**

The State supports and encourages initiatives to protect and preserve our environment. Contractor shall submit information related to supporting the solicitation of materials with

## **Attachment C SCOPE OF WORK (SOW)**

recycled content and climate friendly products within (5) business days of the Customer's request.

#### **4. Contract Requirements**

All products under this Contract shall:

- a. conform with the physical characteristics of the Core Products;
- b. be of good quality, new, and free from defect for each specified Product (and upon a Customer's request, the Contractor shall provide a sample of the Product).
- c. be of a substantially similar size, (including length, width, thickness, and weight) as the Core Products;
- d. be of equal or greater quantity per case than the Core Products;
- e. perform satisfactorily and in accordance with its intended function and product description and specification sheets;
- f. contain no disagreeable odor, either wet or dry;
- g. be uniform and made in accordance with industry standards with respect to cleanliness, lint, pliability, softness, dispersion, and dirt. All products shall be free of holes, tears, wrinkles, lumps, foreign materials, and abrasive particles;
- h. concerning paper products, be folded and assembled to dispense one item cloth at a time; and
- i. concerning paper products containing recycled content, be derived from materials that include pre-consumer and/or post-consumer recycled paper.

The Department and Customers may request technical documentation from vendors at any time to verify that products proposed or offered by Contractor conform with the minimum requirements herein. Acceptable technical documentation shall include, but is not limited to, manufacturers' specification sheets, technical publications, printed product literature, engineering drawings, instruction or maintenance manuals or other published manufacturers' literature, and all certifications required by the specifications. Acceptable documentation shall be legible and have good printed quality. Contractor shall provide technical documentation to Customers within five business days of request.

#### **5. Ordering**

The Contractor shall fulfill all Customer orders under this Contract. Customers are to specify their contact person and the delivery location at the time of placing an order.

Orders shall be shipped Free On Board (FOB) Destination.

In order to procure products and services hereunder, Customers will issue purchase orders or use a purchasing card and shall reference the Contract number.

## **Attachment C SCOPE OF WORK (SOW)**

If any additional ordinance, rule, or other local governmental authority requires additional contract language before a Customer can make a purchase under the Contract, the Customer is responsible for capturing that additional contract language therein.

Any Order placed by a Customer for a Product and/or Service available from the Contract shall be deemed to be a sale under and governed by the terms and conditions of the Contract. To the extent the Customer and the Contractor agree on additional terms, the terms will be documented on the Customer's purchase order and signed by both parties. The Contractor must be able to accept purchase orders via fax, e-mail, or the MyFloridaMarketPlace (MFMP).

### **6. Preparation for Delivery**

Packing: The Contractor shall ensure all products are packed in a manner which ensures safe delivery to Customers.

Marking: The Contractor shall plainly mark each container as to manufacturer, manufacturer's code, size, quantities, name of the Contractor, and Contract and purchase order numbers.

### **7. Timely and Complete Delivery**

The Contractor shall provide timely and complete delivery of products to the Customer. The Contractor shall notify the Customer of delivery at least three (3) Business Days in advance of delivery. The Contractor shall provide complete delivery of all ordered products. No partial deliveries will be accepted, unless prior approval is given by the Customer.

Deliveries, after receipt of an order, shall occur within the following schedule:

<u>Order Quantity</u>	<u>Delivered Within</u>
Up to 99 Cases	Ten (10) Business Days
100-399 Cases	Twenty (20) Business Days
Greater than 399 Cases	Thirty (30) Business Days

The Contractor shall be responsible for any personal or property damage as a result of delivery. The Contractor shall be fully responsible for any damage or defects for all ordered commodities by the Customer.

The Contractor shall notify the Customer of any potential delivery delays within five (5) Business Days after receiving an order. Evidence of repeated inability to deliver within required times or of delivery delays shall be cause for finding the Contractor is in default and/or Contractor suspension.

### **8. Inside Delivery Charge**

Contract pricing includes Dockside or Street Delivery. Charges for Inside Delivery, if applicable, will be added to the invoice as a separate line item. The Inside Delivery charge must be approved by the Customer before being included on the invoice. When the ordering Customer elects to waive this service, the Inside Delivery charge shall not apply to the order.

### **9. Special Handling**

In some delivery locations there may be limited access to Customers' buildings. The Contractor shall ensure compliance with all security requirements or other requirements

## **Attachment C SCOPE OF WORK (SOW)**

maintained by the Customer (for example, the Florida Department of Law Enforcement has specific security requirements). In instances where special handling is necessary, the Contractor shall notify the Customer at least two Business Days in advance of delivery so that necessary delivery arrangements can be made.

### **10. Pricing**

The Contractor shall adhere to the prices included in the Price Sheet it submitted in response to the ITB, which are incorporated by reference into the Contract.

### **11. Substitutions**

During the life of the Contract, the Contractor shall provide all products included in the Contract. In the event the Contractor fails to source the supply of a product at any time for any reason during the Contract's term, the Contractor shall temporarily supply an Equivalent Product (or the Core Product) at or below the price submitted for the unavailable product.

In the event of a Contractor's failure to source the supply of a product, the Contractor shall have five Business Days from the date it becomes aware of such failure to notify the Department in writing providing technical documentation showing that each Equivalent Product meets and/or exceeds specifications. The Department shall review the technical documentation and specifications to ensure compliance with the Contract. Any substitution must be approved by the Department prior to delivery.

### **12. Returns**

Products that are returned due to Contractor error shall be returned at the Contractor's expense. The Contractor shall make arrangements to remove the returned products from the Customer's premises within five Business Days after notification. Regularly stocked products that are returned due to Customer error shall be returned at the Customer's expense without incurring re-stocking fees if returned in original packaging and notice of return is provided within twenty Business Days of delivery.

### **13. Customer Service and Administration**

The Contractor shall provide Customers all Commodities during Business Days. The following days are observed as holidays by state agencies in accordance with section 110.117, F.S.:

- New Year's Day
- Birthday of Martin Luther King, Jr., third Monday in January
- Memorial Day
- Independence Day
- Labor Day
- Veterans' Day, November 11
- Thanksgiving Day
- Friday after Thanksgiving
- Christmas Day

If any of these holidays falls on Saturday, the preceding Friday shall be observed as a holiday. If any of these holidays falls on Sunday, the following Monday shall be observed as a holiday. The preceding holidays are subject to revision pursuant to amendment to section 110.117, F.S., or other enactment.

## **Attachment C**

### **SCOPE OF WORK (SOW)**

The Contractor shall have a single point of contact to serve as Contract Manager. The Contractor's Contract Manager may support multiple Customers and must respond to Customer calls and/or emails within one (1) Business Day. The Contractor's Contract Manager must be able to provide or arrange for all aspects of Customer support and problem resolutions. Back-up coverage must be provided by an equally knowledgeable person.

In addition to a dedicated Contract Manager, the Contractor shall provide toll-free Customer service phone support from 8:00 a.m. to 5:00 p.m. 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-named Customer service operating hours.

#### **14. Routine Communications**

All routine communications and reports related to the Contract shall be sent to the Department's Contract Manager. If any information listed on the Vendor Information form changes during the life of the Contract, then the Contractor shall update the attachments and submit them to the Department's Contract Manager Communications relating to a specific order should be addressed to the contact person identified on the order. Communications may be by e-mail, regular mail, or telephone.

#### **15. Invoices**

Invoices must clearly identify the manufacturer, manufacturer's code, size, quantity, the Contractor's name, Contract number, and purchase order number. The Contractor will provide timely billing and Customer will notify Contractor, in writing, of any billing concern.

#### **16. Payments**

Payments shall be made in accordance with sections 215.422 and 287.0585, F.S., for State Agencies, and the Local Government Prompt Payment Act, sections 218.70-218.80, F.S., for local governments.

#### **17. Purchasing Card**

The State of Florida has implemented a purchasing card program, using the Visa platform. The Contractor may receive payments via the state's Purchasing Card in the same manner as any other Visa purchases. Purchasing Card/Visa acceptance for purchase is a mandatory requirement for the Contract but is not the exclusive method of payment. If the state changes its Purchasing Card platform during the term of the Contract, the Contractor shall make any necessary changes to accommodate the state's new Purchasing Card platform within thirty (30) calendar days of notification of such change.

#### **18. Punchout Catalog and Electronic Invoicing**

The Contractor is required to provide an MFMP punchout catalog. The punchout catalog provides an alternative mechanism for suppliers to offer the State of Florida access to products awarded under the Contract. The punchout catalog also allows for direct communication between the MFMP eProcurement System and a supplier's Enterprise Resource Planning (ERP) system, which can reflect real-time product inventory/availability information.

Through utilization of the punchout catalog model, a Florida buyer will "punch out" to a supplier's website. Using the search tools on the supplier's Florida punchout catalog site, the user selects the desired products and services. When complete, the user exits the supplier's punchout catalog site and the shopping cart (full of products and services) is

## **Attachment C SCOPE OF WORK (SOW)**

“brought back” to MFMP. No orders are sent to a supplier when the user exits the supplier’s punchout catalog site. Instead, the chosen products and services are “brought back” to MFMP as Contract line items. The user can then proceed through the normal workflow steps, which may include adding/editing the products to a requisition or a purchase order. An order is not submitted to a supplier until the buyer adds the line items to a requisition and the purchase order is approved and sent to the supplier.

The Contractor may be required to invoice electronically pursuant to guidelines of the Department. Electronic invoices may be submitted to the agency through the Ariba Network (AN) in one of three mechanisms as listed below. The Contractors may select the method that best meets their capabilities from the following list:

- **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 Ariba Network (AN) for catalog and non-catalog products and services. The cXML format is the Ariba preferred method for eInvoicing.
  
- **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 ASN for catalog and non-catalog goods and services.
  
- **PO Flip via ASN**  
The online process allows suppliers to submit invoices via the ASN for catalog and non-catalog goods and services. Contractors have the ability to create an invoice directly from their Inbox in their ASN 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 MFMP 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 use, reproduce, transmit, distribute, and publicly display within the MFMP 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 punchout catalog and electronic invoicing.

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## Attachment C SCOPE OF WORK (SOW)

### 19. Contract Reporting Requirements

The Contractor shall report information on orders received from Customers associated with the Contract.

The Contractor shall submit reports in accordance with the following schedule:

Report/Documentation	Period Covered	Due Date
MFMP Transaction Fee Report	Calendar month	Fifteen calendar days after the end of each month.
Quarterly Sales Report	State's Fiscal Quarter	Thirty calendar days after close of the period.
Diversity Report (submitted to the Customer)	State's Fiscal Year	Thirty business days after close of the period.
Preferred Pricing Affidavit	Annual	Contract anniversary date.
Proof of Insurance	Annual	Upon policy renewal.

The Department may not consider renewal of a Contract or price adjustments if the Contractor is late on submitting required reports or for outstanding fees owed.

### 20. MFMP Transaction Fee Report

The Contractor is required to submit monthly Transaction Fee Reports in the Department's electronic format. Reports are due fifteen (15) calendar days after the end of the reporting period. For information on how to submit Transaction Fee Reports online, please reference the detailed fee reporting instructions and vendor training presentations available online at the 'Transaction Fee & Reporting' section and 'Training for Vendors' subsections under 'Vendors' on the MFMP website. Assistance with Transaction Fee Reporting is also available from the MFMP Customer Service Desk by email at [feeprocessing@myfloridamarketplace.com](mailto:feeprocessing@myfloridamarketplace.com), or telephone 866-FLA-EPRO (866-352-3776) from 8:00 a.m. to 6:00 p.m. Eastern Time.

### 21. Quarterly Sales Reports

The Contractor shall submit a quarterly sales report electronically, in the required format, to the Department's Contract Manager within thirty calendar days after close of each quarter. The required format for the quarterly sales report is available at [https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/vendor\\_resources/quarterly\\_sales\\_report\\_format](https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources/quarterly_sales_report_format). Failure to provide the quarterly sales report may result in the imposition of financial consequences or the Contractor being found in default and may result in Contract termination. Initiation and submission of the quarterly sales report are the responsibility of the Contractor without prompting or notification by the Department. Sales will be reviewed on a quarterly basis. If no sales are recorded during the period, the Contractor must submit a report stating that there was no activity. If the Contractor fails to submit three (3) consecutive quarterly sales reports, this may be considered a breach of the Contract and

## **Attachment C SCOPE OF WORK (SOW)**

the Contract may be terminated or the Department may choose to not renew the Contract. Sales will be reviewed on a quarterly basis. If no sales are recorded in three (3) consecutive Contract quarters, the Department may terminate the Contract.

Quarter 1 (July-September) - due thirty calendar days after the close of the period.

Quarter 2 (October-December) - due thirty calendar days after the close of the period.

Quarter 3 (January-March) - due thirty calendar days after the close of the period.

Quarter 4 (April-June) - due thirty calendar days after the close of the period.

### **22. Diversity Report**

The Contractor shall report to each Customer, spend with certified and other minority business enterprises. These reports shall include the period covered, the name, minority code and Federal Employer Identification Number of each minority business utilized during the period, commodities and services provided by the minority business enterprise, and the amount paid to each minority business on behalf of each purchasing agency ordering under the terms of the Contract.

### **23. Ad-hoc Report**

The Department may require additional Contract sales information such as copies of purchase orders or ad hoc sales reports. The Contractor is required to submit ad hoc reports within the time specified by the Department.

### **24. Business Review Meetings**

Each quarter the Department may request a business review meeting. The business review meeting may include, but is not limited to, the following:

- Successful completion of deliverables;
- Review of the Contractor's performance;
- Review of minimum required reports;
- Addressing of any elevated Customer issues; and
- Review of continuous improvement ideas that may help lower total costs and/or improve business efficiencies.

### **25. Financial Consequences**

The following financial consequences will apply for nonperformance of the Contract by a Contractor. The State reserves the right to withhold payment or implement other appropriate remedies, such as contract termination or nonrenewal, when the Contractor has failed to perform/comply with provisions of the Contract. These consequences for non-performance are not to be considered penalties.

Financial consequences may be paid via check or money order and made out to the Department of Management Services in US Dollars within thirty (30) calendar days after the required report submission date. These consequences are individually assessed for failures over each target period beginning with the first full month or quarter of Contract performance and every quarter thereafter.

## Attachment C SCOPE OF WORK (SOW)

Contract Requirement	Description	Frequency	Financial Consequence for Non- Performance
Submission of complete and accurate Contract Quarterly Sales Report (DMS only)	Submit Quarterly Sales Report thirty calendar days after close of each quarter	Per Quarter	\$250 per day late
Submission of complete and accurate Contract Monthly Transaction Fee Report (DMS only)	Submit Monthly Transaction Fee Report fifteen calendar days after the end of each month	Per Month	\$100 per day late
Timely and Complete Delivery of Commodities	Timely and complete delivery of products in accordance with the 'Delivery' section	Per Occurrence	5% reduction from the original invoice amount per missing or untimely delivered product
Quality Products	Provide quality products in accordance with the 'Contract Requirements' section	Per Occurrence	5% reduction from the original invoice amount per product

The Department and Customers reserve the right to withhold payment or implement other appropriate remedies, such as Contract termination or non-renewal, when the Contractor has failed to perform/comply with the provisions of the Contract. These consequences of non-performance shall not be considered penalties.

### 26. Contract Products

The Contractor shall only offer awarded products on the Contractor's punchout catalog for the State of Florida. Products shall be clearly designated as "Contract Items" in the punchout catalog. Non-Contract Products will not be permitted and cannot be purchased under the Contract.

### 27. Contractor and Applicable Subcontractors, Resellers, Distributors and Dealers

By execution of a Contract, the Contractor acknowledges that it will not be released of its contractual obligations to the Department because of any subcontractor, reseller, distributor or dealer. The Contract terms are applicable to subcontractors, resellers, distributors and dealers and shall apply to the Contractor's affiliates, partners, teammates, or any other third-party vendors providing commodities and performing services in furtherance of the Contract. The Contractor is fully responsible for satisfactory completion of all work performed under the Contract.

## Attachment C SCOPE OF WORK (SOW)

### 28. Price Adjustments

For the renewal period, the initial renewal prices will be the prices specified as the renewal prices on the Price Sheet; however, the renewal prices may be adjusted no earlier than twelve months after the start date of the renewal period and, thereafter, no earlier than twelve months after the effective date of the previous price adjustment. Price increases must be supported by a change in the Producer Price Index (PPI) for the Series ID(s) shown in the table below. This information is published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS), and is available at <http://www.bls.gov/data/>.

Series ID	Product
322291322291	Sanitary paper product manufacturing

The change in PPI for the first price adjustment after the start date of the renewal term shall be determined using the PPI for the month in which the start date of the renewal period began and the latest available non-preliminary PPI at the time of the price adjustment request (a preliminary PPI is indicated on the BLS website with a "(P)" notation). The change in PPI for second and subsequent price adjustments shall be determined using the latest PPI that was used to support the previous price adjustment and the latest available non-preliminary PPI at the time of the request.

When requesting a price increase, the Contractor shall submit a written justification to the Contract Manager detailing the reason(s) for the request; an increase in the PPI is not sufficient justification for a price increase by itself. Price increases shall not exceed the percent change in PPI or three percent (3%), whichever is less. The percent change in PPI shall be calculated using the following formula:

$$(B - A) / A = Z$$

Where:

A = earliest PPI (PPI at time the renewal period began or previous price adjustment)

B = latest PPI (latest available non-preliminary PPI at time of price adjustment request)

Z = percent change in PPI

The Department reserves the exclusive right to approve or deny any price adjustment request. Price adjustments will not be considered for any Contractor with any contractual non-performance issues including, but not limited to, outstanding fees or monies due under this Contract or overdue reports or documentation including, but not limited to, a Quarterly Sales Report or an MFMP Transaction Fee Report. Price adjustments are effective only upon written approval by the Department and may not be applied retroactively. The Department reserves the right to request price decreases at any time during the term of the Contract if it is found to be in the best interest of the State. Price decreases issued by the Contractor are permissible at any time during the initial and renewal terms.

### 29. Product Adjustments

Requested product adjustments may be submitted once annually on the Contract's execution anniversary and must be approved by the Department and added to the Contract before being offered to Customers.

## **Attachment C SCOPE OF WORK (SOW)**

**30. Recall(s)**

In the event there is a recall of any of the products, any of its components or any parts of Commodity, the Contractor shall provide reasonable assistance to the Department in developing a recall strategy and shall cooperate with the Department and the Customer in monitoring the recall operation and in preparing such reports as may be required. Each Contractor shall, at the request of the Department or any Customer give the Department and each Customer all reasonable assistance in locating and recovering any products or recalled products that are not in accordance with the requirements of the Contract. Each Contractor shall immediately notify and provide copies to the Department of any communications, whether relating to recalls or otherwise, with any Customer. The Contractor, at its own cost, shall ensure defective Commodities are rectified, replaced or destroyed in compliance with all applicable laws, rules or regulations and the Department's reasonable instructions.

**31. Contract Transition**

Upon Contract expiration or termination, the incumbent shall ensure a seamless transfer of Contract responsibilities with any subsequent Contractor necessary to transition the Products and Services of the Contract. The incumbent Contractor and subsequent Contractor assume all expenses related to the contract transition.

**32. Other Fees and Charges**

Additional fees (including but not limited to, property taxes, fuel surcharges, interest fees, late payment fees except where permitted by section 215.422(3)(b), F.S.) or fees not permitted elsewhere in the Contract are prohibited.

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**ATTACHMENT A  
SPECIAL CONTRACT CONDITIONS  
JULY 1, 2019 VERSION**

Table of Contents

SECTION 1. DEFINITION.....	2
SECTION 2. CONTRACT TERM AND TERMINATION.....	2
SECTION 3. PAYMENT AND FEES.....	3
SECTION 4. CONTRACT MANAGEMENT.....	4
SECTION 5. COMPLIANCE WITH LAWS.....	6
SECTION 6. MISCELLANEOUS.....	7
SECTION 7. LIABILITY AND INSURANCE.....	9
SECTION 8. PUBLIC RECORDS, TRADE SECRETS, DOCUMENT MANAGEMENT, AND INTELLECTUAL PROPERTY.....	10
SECTION 9. DATA SECURITY.....	12
SECTION 10. GRATUITIES, LOBBYING, AND COMMUNICATIONS.....	13
SECTION 11. CONTRACT MONITORING.....	14
SECTION 12. CONTRACT AUDITS.....	15
SECTION 13. BACKGROUND SCREENING AND SECURITY.....	16
SECTION 14. WARRANTY OF CONTRACTOR’S ABILITY TO PERFORM.....	17

**In accordance with Rule 60A-1.002(7), F.A.C., Form PUR 1000 is included herein by reference but is superseded in its entirety by these Special Contract Conditions.**

## **SECTION 1. DEFINITION.**

The following definition applies in addition to the definitions in Chapter 287, Florida Statutes (F.S.), and Rule Chapter 60A-1, Florida Administrative Code (F.A.C.):

### **1.1 Customer.**

The agency or eligible user that purchases commodities or contractual services pursuant to the Contract.

## **SECTION 2. CONTRACT TERM AND TERMINATION.**

### **2.1 Initial Term.**

The initial term will begin on the date set forth in the Contract documents or on the date the Contract is signed by all Parties, whichever is later.

### **2.2 Renewal.**

Upon written agreement, the Department and the Contractor may renew the Contract in whole or in part only as set forth in the Contract documents, and in accordance with section 287.057(13), F.S.

### **2.3 Suspension of Work and Termination.**

#### **2.3.1 Suspension of Work.**

The Department may, at its sole discretion, suspend any or all activities under the Contract, at any time, when it is in the best interest of the State of Florida to do so. The Customer may suspend a resulting contract or purchase order, at any time, when in the best interest of the Customer to do so. The Department or Customer will provide the Contractor written notice outlining the particulars of the suspension. After receiving a suspension notice, the Contractor must comply with the notice and will cease the performance of the Contract or purchase order. Suspension of work will not entitle the Contractor to any additional compensation. The Contractor will not resume performance of the Contract or purchase order until so authorized by the Department.

#### **2.3.2 Termination for Convenience.**

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

#### **2.3.3 Termination for Cause.**

If the performance of the Contractor is not in compliance with the Contract requirements or the Contractor has defaulted, the Department may:

- (a) immediately terminate the Contract;
- (b) notify the Contractor of the noncompliance or default, require correction, and specify the date by which the correction must be completed before the Contract is terminated; or
- (c) take other action deemed appropriate by the Department.

### **SECTION 3. PAYMENT AND FEES.**

#### **3.1 Pricing.**

The Contractor will not exceed the pricing set forth in the Contract documents.

#### **3.2 Price Decreases.**

The following price decrease terms will apply to the Contract:

**3.2.1 Quantity Discounts.** Contractor may offer additional discounts for one-time delivery of large single orders;

**3.2.2 Preferred Pricing.** The Contractor guarantees that the pricing indicated in this Contract is a maximum price. Additionally, Contractor's pricing will not exceed the pricing offered under comparable contracts. Comparable contracts are those that are similar in size, scope, and terms. In compliance with section 216.0113, F.S., Contractor must annually submit an affidavit from the Contractor's authorized representative attesting that the Contract complies with this clause.

**3.2.3 Sales Promotions.** In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, the Contractor may conduct sales promotions involving price reductions for a specified lesser period. The Contractor must submit documentation identifying the proposed: (1) starting and ending dates of the promotion, (2) commodities or contractual services involved, and (3) promotional prices compared to then-authorized prices.

#### **3.3 Payment Invoicing.**

The Contractor will be paid upon submission of invoices to the Customer after delivery and acceptance of commodities or contractual services is confirmed by the Customer. Invoices must contain sufficient detail for an audit and contain the Contract Number and the Contractor's Federal Employer Identification Number.

#### **3.4 Purchase Order.**

A Customer may use purchase orders to buy commodities or contractual services pursuant to the Contract and, if applicable, the Contractor must provide commodities or contractual services pursuant to purchase orders. Purchase orders issued pursuant to the Contract must be received by the Contractor no later than the close of business on the last day of the Contract's term. The Contractor is required to accept timely purchase orders specifying delivery schedules that extend beyond the Contract term even when such extended delivery will occur after expiration of the Contract. Purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the Contract shall survive the termination or expiration of the Contract and apply to the Contractor's performance. The duration of purchase orders for recurring deliverables shall not exceed the expiration of the Contract by more than twelve months. Any purchase order terms and conditions conflicting with these Special Contract Conditions shall not become a part of the Contract.

#### **3.5 Travel.**

Travel expenses are not reimbursable unless specifically authorized by the Customer in writing and may be reimbursed only in accordance with section 112.061, F.S.



### 3.6 Annual Appropriation.

Pursuant to section 287.0582, F.S., if the Contract binds the State of Florida or an agency for the purchase of services or tangible personal property for a period in excess of one fiscal year, the State of Florida's performance and obligation to pay under the Contract is contingent upon an annual appropriation by the Legislature.

### 3.7 Transaction Fees.

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

### 3.8 Taxes.

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

### 3.9 Return of Funds.

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

## **SECTION 4. CONTRACT MANAGEMENT.**

### 4.1 Composition and Priority.

The Contractor agrees to provide commodities or contractual services to the Customer as specified in the Contract. Additionally, the terms of the Contract supersede the terms of all prior agreements between the Parties on this subject matter.

### 4.2 Notices.

All notices required under the Contract must be delivered to the designated Contract Manager in a manner identified by the Department.

### 4.3 Department's Contract Manager.

The Department's Contract Manager, who is primarily responsible for the Department's oversight of the Contract, will be identified in a separate writing to the Contractor upon Contract signing in the following format:

Department's Contract Manager Name

Department's Name  
Department's Physical Address  
Department's Telephone #  
Department's Email Address

If the Department changes the Contract Manager, the Department will notify the Contractor. Such a change does not require an amendment to the Contract.

#### 4.4 Contractor's Contract Manager.

The Contractor's Contract Manager, who is primarily responsible for the Contractor's oversight of the Contract performance, will be identified in a separate writing to the Department upon Contract signing in the following format:

Contractor's Contract Manager Name  
Contractor's Name  
Contractor's Physical Address  
Contractor's Telephone #  
Contractor's Email Address

If the Contractor changes its Contract Manager, the Contractor will notify the Department. Such a change does not require an amendment to the Contract.

#### 4.5 Diversity.

##### 4.5.1 Office of Supplier Diversity.

The State of Florida supports its diverse business community by creating opportunities for woman-, veteran-, and minority-owned small business enterprises to participate in procurements and contracts. The Department encourages supplier diversity through certification of woman-, veteran-, and minority-owned small business enterprises and provides advocacy, outreach, and networking through regional business events. For additional information, please contact the Office of Supplier Diversity (OSD) at [osdinfo@dms.myflorida.com](mailto:osdinfo@dms.myflorida.com).

##### 4.5.2 Diversity Reporting.

Upon request, the Contractor will report to the Department its spend with business enterprises certified by the OSD. These reports must include the time period covered, the name and Federal Employer Identification Number of each business enterprise utilized during the period, commodities and contractual services provided by the business enterprise, and the amount paid to the business enterprise on behalf of each agency purchasing under the Contract.

#### 4.6 RESPECT.

Subject to the agency determination provided for in section 413.036, F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES THAT ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM A NONPROFIT AGENCY FOR THE BLIND OR FOR THE SEVERELY HANDICAPPED THAT IS QUALIFIED PURSUANT TO CHAPTER 413, 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 RESPECT and the commodities or contractual services it offers is available at <https://www.respectofflorida.org>.

#### 4.7 PRIDE.

Subject to the agency determination provided for in sections 287.042(1) and 946.515, F.S., the following statement applies:

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

Additional information about PRIDE and the commodities or contractual services it offers is available at <https://www.pride-enterprises.org>.

### **SECTION 5. COMPLIANCE WITH LAWS.**

#### 5.1 Conduct of Business.

The Contractor must comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. For example, the Contractor must comply with section 274A of the Immigration and Nationality Act, the Americans with Disabilities Act, Health Insurance Portability and Accountability Act, if applicable, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. The provisions of subparagraphs 287.058(1)(a)-(c), and (g), F.S., are hereby incorporated by reference.

#### 5.2 Dispute Resolution, Governing Law, and Venue.

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

#### 5.3 Department of State Registration.

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

#### 5.4 Suspended, Convicted, and Discriminatory Vendor Lists.

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

#### 5.5 Scrutinized Companies - Termination by the Department.

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

#### 5.6 Cooperation with Inspector General and Records Retention.

Pursuant to section 20.055(5), F.S., the Contractor understands and will comply with its duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Contractor must provide any information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but will 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 will retain such records for the longer of five years after the expiration of the Contract, or the period required by the General Records Schedules maintained by the Florida Department of State, at the Department of State's Records Management website. The Contractor agrees to reimburse the State of Florida for the reasonable costs of investigation incurred by the Inspector General or other authorized State of Florida official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State of Florida which results in the suspension or debarment of the Contractor. Such costs will include but will not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor agrees to impose the same obligations to cooperate with the Inspector General and retain records on any subcontractors used to provide goods or services under the Contract.

### **SECTION 6. MISCELLANEOUS.**

#### 6.1 Subcontractors.

The Contractor will not subcontract any work under the Contract without prior written consent of the Department. The Contractor is fully responsible for satisfactory completion of all its subcontracted work. The Department supports diversity in its procurements and contracts, and requests that the Contractor offer subcontracting opportunities to certified woman-, veteran-, and minority-owned small businesses. The

Contractor may contact the OSD at [osdhelp@dms.myflorida.com](mailto:osdhelp@dms.myflorida.com) for information on certified small business enterprises available for subcontracting opportunities.

#### 6.2 Assignment.

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

#### 6.3 Independent Contractor.

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

#### 6.4 Inspection and Acceptance of Commodities.

##### 6.4.1 Risk of Loss.

Matters of inspection and acceptance are addressed in section 215.422, F.S. Until acceptance, risk of loss or damage will remain with the Contractor. The Contractor will be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer will: 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.

##### 6.4.2 Rejected Commodities.

When a Customer rejects a commodity, Contractor will remove the commodity from the premises within ten (10) calendar days after notification of rejection, and the risk of loss will remain with the Contractor. Commodities not removed by the Contractor within ten (10) calendar days will be deemed abandoned by the Contractor, and the Customer will have the right to dispose of such commodities. Contractor will reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected commodities.

#### 6.5 Safety Standards.

Performance of the Contract for all commodities or contractual services must comply with requirements of the Occupational Safety and Health Act and other applicable State of Florida and federal requirements.

#### 6.6 Ombudsman.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this office are found in section 215.422, F.S., which include disseminating information relative to prompt payment and assisting contractors in receiving their payments in a timely manner from a Customer. The Vendor Ombudsman may be contacted at (850) 413-5516.

**6.7 Time is of the Essence.**

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

**6.8 Waiver.**

The delay or failure by the Department or the Customer to exercise or enforce any rights under the Contract will not constitute waiver of such rights.

**6.9 Modification and Severability.**

The Contract may only be modified by written agreement between the Department and the Contractor. Should a court determine any provision of the Contract is invalid, the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Contract did not contain the provision held invalid.

**6.10 Cooperative Purchasing.**

Pursuant to their own governing laws, and subject to the agreement of the Contractor, governmental entities that are not Customers may make purchases under the terms and conditions contained herein, if agreed to by Contractor. Such purchases are independent of the Contract between the Department and the Contractor, and the Department is not a party to these transactions. Agencies seeking to make purchases under this Contract are required to follow the requirements of Rule 60A-1.045(5), F.A.C.

**SECTION 7. LIABILITY AND INSURANCE.**

**7.1 Workers' Compensation Insurance.**

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

**7.2 General Liability Insurance.**

The Contractor must secure and maintain Commercial General Liability Insurance, including bodily injury, property damage, products, personal and advertising injury, and completed operations. This insurance must provide coverage for all claims that may arise from performance of the Contract or completed operations, whether by the Contractor or anyone directly or indirectly employed by the Contractor. Such insurance must include the State of Florida as an additional insured for the entire length of the resulting contract. The Contractor is responsible for determining the minimum limits of liability necessary to provide reasonable financial protections to the Contractor and the State of Florida under the resulting contract.

**7.3 Florida Authorized Insurers.**

All insurance shall be with insurers authorized and eligible to transact the applicable line of insurance business in the State of Florida. The Contractor shall provide Certification(s) of Insurance evidencing that all appropriate coverage is in place and showing the Department to be an additional insured.

#### 7.4 Performance Bond.

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

#### 7.5 Indemnification.

To the extent permitted by Florida law, the Contractor agrees to indemnify, defend, and hold the Customer and the State of Florida, its officers, employees, and agents harmless from all fines, claims, assessments, suits, judgments, or damages, including consequential, special, indirect, and punitive damages, including court costs and attorney's fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret, or intellectual property right or out of any acts, actions, breaches, neglect, or omissions of the Contractor, its employees, agents, subcontractors, assignees, or delegates related to the Contract, as well as for any determination arising out of or related to the Contract that the Contractor or Contractor's employees, agents, subcontractors, assignees, or delegates are not independent contractors in relation to the Customer. The Contract does not constitute a waiver of sovereign immunity or consent by the Customer or the State of Florida or its subdivisions to suit by third parties. Without limiting this indemnification, the Customer may provide 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.

#### 7.6 Limitation of Liability.

Unless otherwise specifically enumerated in the Contract or in the purchase order, neither the Department nor the Customer shall be liable 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 Department or Customer has been advised that such damages are possible. Neither the Department nor the Customer shall be liable for lost profits, lost revenue, or lost institutional operating savings. The Department or 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.

### **SECTION 8. PUBLIC RECORDS, TRADE SECRETS, DOCUMENT MANAGEMENT, AND INTELLECTUAL PROPERTY.**

#### 8.1 Public Records.

##### 8.1.1 Termination of Contract.

The Department may terminate the Contract for refusal by the Contractor to comply with this section by not allowing access to all public records, as defined in Chapter 119, F. S., made or received by the Contractor in conjunction with the Contract.

#### 8.1.2 Statutory Notice.

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

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

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

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the Contract term and following the completion of the Contract if the Contractor does not transfer the records to the public agency.
- (d) Upon completion of the Contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

#### 8.2 Protection of Trade Secrets or Otherwise Confidential Information.

8.2.1 Contractor Designation of Trade Secrets or Otherwise Confidential Information. If the Contractor considers any portion of materials to be trade secret under section 688.002 or 812.081, F.S., or otherwise confidential under Florida or federal law, the Contractor must clearly designate that portion of the materials as trade secret or otherwise confidential when submitted to the Department. The Contractor will be



responsible for responding to and resolving all claims for access to Contract-related materials it has designated trade secret or otherwise confidential.

#### 8.2.2 Public Records Requests.

If the Department receives a public records request for materials designated by the Contractor as trade secret or otherwise confidential under Florida or federal law, the Contractor will be responsible for taking the appropriate legal action in response to the request. If the Contractor fails to take appropriate and timely action to protect the materials designated as trade secret or otherwise confidential, the Department will provide the materials to the requester.

#### 8.2.3 Indemnification Related to Confidentiality of Materials.

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

#### 8.3 Document Management.

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

#### 8.4 Intellectual Property.

##### 8.4.1 Ownership.

Unless specifically addressed otherwise in the Contract, the State of Florida shall be the owner of all intellectual property rights to all property created or developed in connection with the Contract.

##### 8.4.2 Patentable Inventions or Discoveries.

Any inventions or discoveries developed in the course, or as a result, of services in connection with the Contract that are patentable pursuant to 35 U.S.C. § 101 are the sole property of the State of Florida. Contractor must inform the Customer of any inventions or discoveries developed or made through performance of the Contract, and such inventions or discoveries will be referred to the Florida Department of State for a determination on whether patent protection will be sought. The State of Florida will be the sole owner of all patents resulting from any invention or discovery made through performance of the Contract.

##### 8.4.3 Copyrightable Works.

Contractor must notify the Department or State of Florida of any publications, artwork, or other copyrightable works developed in connection with the Contract. All copyrights created or developed through performance of the Contract are owned solely by the State of Florida.

### **SECTION 9. DATA SECURITY.**

The Contractor will maintain the security of State of Florida data including, but not limited to, maintaining a secure area around any displayed visible data and ensuring data is stored and secured when not in use. The Contractor and subcontractors will not perform any of the services from outside of the United States, and the Contractor will not allow any State of Florida data to be sent by any medium, transmitted, or accessed outside the United States due to Contractor's action or inaction. In the event of a security breach involving State of Florida data, the Contractor shall give notice to the Customer and the Department within one business day. "Security breach" for purposes of this section will refer to a confirmed event that compromises the confidentiality, integrity, or availability of data. Once a data breach has been contained, the Contractor must provide the Department with a post-incident report documenting all containment, eradication, and recovery measures taken. The Department reserves the right in its sole discretion to enlist a third party to audit Contractor's findings and produce an independent report, and the Contractor will fully cooperate with the third party. The Contractor will also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information.

## **SECTION 10. GRATUITIES, LOBBYING, AND COMMUNICATIONS.**

### 10.1 Gratuities.

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

### 10.2 Lobbying.

In accordance with sections 11.062 and 216.347, F.S., Contract funds are not to be used for the purpose of lobbying the Legislature, the judicial branch, or the Department. Pursuant to section 287.058(6), F.S., the Contract does not prohibit the Contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the Contract after the Contract is executed and during the Contract term.

### 10.3 Communications.

#### 10.3.1 Contractor Communication or Disclosure.

The Contractor shall not make any public statements, press releases, publicity releases, or other similar communications concerning the Contract or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with the Contract, without first notifying the Customer's Contract Manager and securing the Customer's prior written consent.

#### 10.3.2 Use of Customer Statements.

The Contractor shall not use any statement attributable to the Customer or its employees for the Contractor's promotions, press releases, publicity releases, marketing, corporate communications, or other similar communications, without first notifying the Customer's Contract Manager and securing the Customer's prior written consent.

## **SECTION 11. CONTRACT MONITORING.**

### **11.1 Performance Standards.**

The Contractor agrees to perform all tasks and provide deliverables as set forth in the Contract. The Department and the Customer will be entitled at all times, upon request, to be advised as to the status of work being done by the Contractor and of the details thereof.

### **11.2 Performance Deficiencies and Financial Consequences of Non-Performance.**

#### **11.2.1 Proposal of Corrective Action Plan.**

In addition to the processes set forth in the Contract (e.g., service level agreements), if the Department or Customer determines that there is a performance deficiency that requires correction by the Contractor, then the Department or Customer will notify the Contractor. The correction must be made within a time-frame specified by the Department or Customer. The Contractor must provide the Department or Customer with a corrective action plan describing how the Contractor will address all performance deficiencies identified by the Department or Customer.

#### **11.2.2 Retainage for Unacceptable Corrective Action Plan or Plan Failure.**

If the corrective action plan is unacceptable to the Department or Customer, or implementation of the plan fails to remedy the performance deficiencies, the Department or Customer will retain ten percent (10%) of the total invoice amount. The retainage will be withheld until the Contractor resolves the performance deficiencies. If the performance deficiencies are resolved, the Contractor may invoice the Department or Customer for the retained amount. If the Contractor fails to resolve the performance deficiencies, the retained amount will be forfeited to compensate the Department or Customer for the performance deficiencies.

### **11.3 Performance Delay.**

#### **11.3.1 Notification.**

The Contractor will promptly notify the Department or Customer upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion (or delivery) of any commodity or contractual service. The Contractor will use commercially reasonable efforts to avoid or minimize any delays in performance and will inform the Department or the Customer of the steps the Contractor is taking or will take to do so, and the projected actual completion (or delivery) time. If the Contractor believes a delay in performance by the Department or the Customer has caused or will cause the Contractor to be unable to perform its obligations on time, the Contractor will promptly so notify the Department and use commercially reasonable efforts to perform its obligations on time notwithstanding the Department's delay.

#### **11.3.2 Liquidated Damages.**

The Contractor acknowledges that delayed performance will damage the Department/Customer, but by their nature such damages are difficult to ascertain. Accordingly, the liquidated damages provisions stated in the Contract documents will apply. Liquidated damages are not intended to be a penalty and are solely intended to compensate for damages.

### **11.4 Force Majeure, Notice of Delay, and No Damages for Delay.**

The Contractor will not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay, and the delay is due directly to fire, explosion, earthquake, windstorm, flood, radioactive or toxic chemical hazard, war, military hostilities, terrorism, civil emergency, embargo, riot, strike, violent civil unrest, or other similar cause wholly beyond the Contractor's reasonable control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. The foregoing does not excuse delay which could have been avoided if the Contractor implemented any risk mitigation required by the Contract. In case of any delay the Contractor believes is excusable, the Contractor will notify the Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) calendar days after the cause that created 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) calendar days after the date the Contractor first had reason to believe that a delay could result. The foregoing will constitute the Contractor's sole remedy or excuse with respect to delay. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages will be asserted by the Contractor. The Contractor will not be entitled to an increase in the Contract price or payment of any kind from the Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor will perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State of Florida or to Customers, in which case the Department may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers and the Department with respect to commodities or contractual services 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 commodity or contractual services 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.

## **SECTION 12. CONTRACT AUDITS.**

### **12.1 Performance or Compliance Audits.**

The Department may conduct or have conducted performance and/or compliance audits of the Contractor and subcontractors as determined by the Department. The Department may conduct an audit and review all the Contractor's and subcontractors' data and records that directly relate to the Contract. To the extent necessary to verify the Contractor's fees and claims for payment under the Contract, the Contractor's agreements or contracts with subcontractors, partners, or agents of the Contractor, pertaining to the Contract, may be inspected by the Department upon fifteen (15) calendar days' notice, during normal working hours and in accordance with the Contractor's facility access procedures where facility access is required. Release statements from its subcontractors, partners, or agents are not required for the Department or its designee to conduct compliance and performance audits on any of the Contractor's contracts relating to this Contract. The Inspector General, in accordance with section 5.6, the State of Florida's Chief Financial Officer, the Office of the Auditor General also have authority to perform audits and inspections.

## 12.2 Payment Audit.

Records of costs incurred under terms of the Contract will be maintained in accordance with section 8.3 of these Special Contract Conditions. Records of costs incurred will include the Contractor's general accounting records, together with supporting documents and records of the Contractor and all subcontractors performing work, and all other records of the Contractor and subcontractors considered necessary by the Department, the State of Florida's Chief Financial Officer, or the Office of the Auditor General.

## **SECTION 13. BACKGROUND SCREENING AND SECURITY.**

### 13.1 Background Check.

The Department or Customer may require the Contractor to conduct background checks of its employees, agents, representatives, and subcontractors as directed by the Department or Customer. The cost of the background checks will be borne by the Contractor. The Department or Customer may require the Contractor to exclude the Contractor's employees, agents, representatives, or subcontractors based on the background check results. In addition, the Contractor must ensure that all persons have a responsibility to self-report to the Contractor within three (3) calendar days any arrest for any disqualifying offense. The Contractor must notify the Contract Manager within twenty-four (24) hours of all details concerning any reported arrest. Upon the request of the Department or Customer, the Contractor will re-screen any of its employees, agents, representatives, and subcontractors during the term of the Contract.

### 13.2 E-Verify.

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

### 13.3 Disqualifying Offenses.

If at any time it is determined that a person has been found guilty of a misdemeanor or felony offense as a result of a trial or has entered a plea of guilty or nolo contendere, regardless of whether adjudication was withheld, within the last six (6) years from the date of the court's determination for the crimes listed below, or their equivalent in any jurisdiction, the Contractor is required to immediately remove that person from any position with access to State of Florida data or directly performing services under the Contract. The disqualifying offenses are as follows:

- (a) Computer related crimes;
- (b) Information technology crimes;

- (c) Fraudulent practices;
- (d) False pretenses;
- (e) Frauds;
- (f) Credit card crimes;
- (g) Forgery;
- (h) Counterfeiting;
- (i) Violations involving checks or drafts;
- (j) Misuse of medical or personnel records; and
- (k) Felony theft.

#### 13.4 Confidentiality.

The Contractor must maintain confidentiality of all confidential data, files, and records related to the commodities or contractual services provided pursuant to the Contract and must comply with all state and federal laws, including, but not limited to sections 381.004, 384.29, 392.65, and 456.057, F.S. The Contractor's confidentiality procedures must be consistent with the most recent version of the Department security policies, protocols, and procedures. The Contractor must also comply with any applicable professional standards with respect to confidentiality of information.

#### **SECTION 14. WARRANTY OF CONTRACTOR'S 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 Suspended Vendor List, Convicted Vendor List, or the Discriminatory Vendor List, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Department in writing if its ability to perform is compromised in any manner during the term of the Contract.