

DEPARTMENT OF FINANCIAL SERVICES
Standard Terms and Conditions
(Applicable to Non-Competitively Procured Contracts)

ATTACHMENT 1

1. Entire Contract.

This Contract, including any Attachments and Addenda referred to herein and attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any preprinted contract terms and conditions included on Contractor's forms or invoices will be null and void.

2. Contract Administration.

- a. Order of Precedence. If there are conflicting provisions between the documents that make up the Contract, the order of precedence for the documents is as follows:
- i. Attachment 2, Statement of Work
 - ii. Contract Signature Page
 - iii. If any, attachments other than Attachment 1, Standard Terms and Conditions, and Attachment 2, Statement of Work, in numerical order as designated in the Contract Signature Page
 - iv. Attachment 1, Standard Terms and Conditions
 - v. Addendum A, Public Records Requirements
 - vi. Addendum B, Data Security Requirements
 - vii. If any, Addenda other than Addenda A and B, in the alphabetical order designated in the Contract Signature Page

Notwithstanding the foregoing, if there is any discrepancy between Attachment 2, Statement of Work, and any incorporated portions of the Contract that were provided by the Contractor, the terms most favorable to the Department will prevail.

- b. Notices. The contact information provided on the Contract Signature Page or in accordance with Section 2.c., below, must be used by the parties for all communications under this Contract. Where the term "written notice" is used to specify a notice requirement herein, said notice will be deemed to have been given (i) when personally delivered; (ii) when transmitted via facsimile (with confirmation of receipt) or email (with confirmation of receipt), provided the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid); (iii) the day following the day (except if not a Business Day then the next Business Day) on which the same has been delivered prepaid to a recognized overnight delivery service; or (iv) shall be deemed received on the date actually received except where there is a date of the certification of receipt.
- c. Contract Managers. The parties' Contract Managers shall be those listed on the Contract Signature Page. If different Contract Managers are designated by any party after execution of this Contract, notice of the name and contact information of the new Contract Manager shall be submitted in writing (which, notwithstanding Section 2.b., above, may be accomplished via mail or e-mail) to all other parties and maintained in the respective parties' Contract records. Designation of a new Contract Manager will not require a written amendment to the Contract.
- d. Approvals. All approvals referenced in this Contract must be obtained from the parties' Contract Managers or their designees if designated in writing.
- e. Amendments. Except as otherwise provided herein, this Contract may be amended only by a written agreement signed by the parties. All statements indicating that continued use of a product or clicking a box in an electronic application constitutes acceptance of terms and conditions are void.

3. Contract Duration.

- a. Term. The term of the Contract will begin and end on the dates indicated on the Contract Signature Page unless terminated earlier in accordance with the applicable terms and conditions.
- b. Renewals. Section 287.058(1)(g), Florida Statutes (F.S.), is hereby incorporated by reference. If the Contract Signature Page indicates that renewals are available, any renewal entered must comply with

all applicable requirements of section 287.057(14), F.S., including the limitations on the period of time for which renewals may be permitted. Renewals may only be entered when funding is available and when performance evaluations reflect satisfactory performance by the Contractor. Renewals must be at the price specified in this Contract and must not compensate the Contractor for any costs associated with the renewals.

4. Deliverables.

The Contractor agrees to render the services or other units of deliverables, which may be comprised of tasks or activities, as set forth in Attachment 2, Statement of Work. The services or other units of deliverables specified shall be delivered in accordance with the schedule outlined in Attachment 2, Statement of Work, and at the pricing specified in the Contract.

5. Performance Measures.

Satisfactory performance requires the Contractor's compliance with the following: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in Attachment 2, Statement of Work; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services offered do not infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) any person or entity, whether an agent or independent contractor, that performs work on the Contract for the Contractor (Contractor Representative) will comply with any security requirements and processes as provided by the Department, or provided by the Department's customer, for work done at the Department or other locations. The Department reserves the right to investigate or inspect at any time whether the services or qualifications offered by the Contractor meet the Contract requirements. Notwithstanding any provisions to the contrary, written acceptance of a particular deliverable/requirement does not foreclose the Department's remedies if those performance standards that cannot be readily measured at the time of delivery are not met.

6. Acceptance of Deliverables.

- a. Acceptance Process. All deliverables must be received and accepted in writing by the Contract Manager before payment, unless advanced payment or partial payment has been authorized in accordance with section 215.422, F.S. The Department will have fifteen (15) calendar days to inspect and approve the deliverables after receipt.
- b. Rejection of Deliverables. The Department reserves the right to reject deliverables outlined in Attachment 2, Statement of Work, as incomplete, inadequate, or unacceptable due in whole or in part to the Contractor's lack of satisfactory performance under the terms of this Contract. If the Department's Contract Manager does not accept a deliverable within fifteen (15) calendar days of receipt, the deliverable will be deemed rejected. Failure to fulfill the applicable technical requirements or complete all tasks, duties, or activities in accordance with Attachment 2, Statement of Work, will result in rejection of the deliverable and the associated invoice. The Department, at its option, may allow additional time within which the Contractor may remedy the objections noted by the Department before the Department issues a notice of default. If the Department's Contract Manager allows additional time for the Contractor to correct a rejected deliverable, the Contractor shall work diligently to correct all deficiencies in the deliverable that remain outstanding within a reasonable time or, if a time certain is specified, within the additional time allotted. All work done to correct a rejected deliverable will be done at the Contractor's expense.
- c. Status Reports. If status reports are required as part of the Contract, the Contractor shall timely submit status reports showing each task, activity, or deliverable worked on; attesting to the level of services provided; listing the hours spent on each task, activity, or deliverable; and listing any upcoming tasks, activities, or deliverables.
- d. Completion Criteria and Date. The Contract will be considered complete once all deliverables under the Contract have been provided and accepted. The final date for completion of the Contract must not exceed the Contract duration, including any executed renewals or extensions, or, where applicable, the expiration date of any purchase orders made from the Contract.

7. Financial Consequences for Nonperformance.

In addition to the specific financial consequences explained in Attachment 2, Statement of Work, the Department reserves the right to withhold payment when the Contractor has failed to perform or comply with any provision of this Contract. These consequences for nonperformance are not to be considered penalties.

8. Dispute Resolution.

The Contractor is obligated to address any cost-related issues with the Department for which the Contractor believes the state of Florida (State) is liable and address all costs of every type to which the Contractor is entitled from the occurrence of the claimed event. The Contractor cannot seek a claim under this Contract for an increase in payment. Any claim, counterclaim, or dispute between the Department and the Contractor relating to this Contract will be resolved as set forth herein.

- a. Initial Resolution Process. For all claims, the party with the dispute shall submit an affidavit to the other party that is executed by that party's Contract Manager, or designee, certifying that:
 - i. The claim is made in good faith;
 - ii. The claim accurately reflects the adjustments for performance; and
 - iii. The supporting data provided with such an affidavit are current and complete to the Contract Manager's, or designee's, best knowledge and belief.

The party receiving notice of the dispute must respond to the disputing party, in writing, proposing a resolution to the dispute.

- b. Informal Resolution Process. If the parties are unable to resolve any dispute through the initial resolution process, the parties shall meet with the Department's Chief Financial Officer (CFO), or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:
 - i. The representatives of the Contractor and the Department shall meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter at issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith to resolve the dispute without the necessity of any formal proceeding.
 - ii. During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to this Contract will be honored in order that each of the parties may be fully advised of the other's position.
 - iii. The specific format for the discussions will be left to the discretion of the designated Department's and the Contractor's representatives but may include the preparation of agreed upon statements of fact or written statements of position.
 - iv. Following the completion of this process, the CFO, or designee, will issue a written opinion regarding the issue(s) in dispute. The opinion regarding the dispute will be considered the Department's final action.
- c. Continued Performance. Each party agrees to continue performing its obligations under this Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute with the Department over compensation will not be deemed to preclude performance) and without limiting any party's right to terminate this Contract for convenience or default.

9. Payment.

- a. Payment Process. Subject to the terms and conditions established in Attachment 2, Statement of Work, the pricing per deliverable established by the Contract, and the billing procedures established by the Department, the Department agrees to pay the Contractor for services rendered in accordance with section 215.422, F.S. To obtain the applicable interest rate, please refer to <http://www.myfloridacfo.com/Division/AA/Vendors/default.htm>.
- b. Vendor Rights. A Vendor Ombudsman has been established within the Department. The duties of this individual include acting as an advocate for contractors who may be experiencing problems in obtaining timely payment(s) from a State agency. The Vendor Ombudsman may be reached at (850) 413-5516.
- c. Taxes. The Department is exempted from payment of State sales and use taxes and Federal Excise Tax. The Contractor, however, will not be exempted from paying State sales and use taxes to the appropriate

governmental agencies or for payment by the Contractor to suppliers for taxes on materials used to fulfill its contractual obligations with the Department. The Contractor shall not use the Department's exemption number in securing such materials. The Contractor shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Contract. The Contractor shall provide the Department its taxpayer identification number upon request.

- d. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by the Department pursuant to Attachment 2, Statement of Work, shall be submitted to the Department in sufficient detail for a proper pre-audit and post-audit to be performed.
- e. Interim Payments. Interim payments may be made by the Department at its discretion under extenuating circumstances if the completion of deliverables to date have first been accepted in writing by the Department's Contract Manager.
- f. Annual Appropriation Contingency. The State's performance and obligation to pay under the Contract is contingent upon an annual appropriation by the Legislature.

10. Insurance.

- a. Required Coverage. At all times during the duration of the Contract, the Contractor, at its sole expense, and its subcontractors, if any, shall maintain insurance coverage of such types and with such terms and limits as may be reasonably associated with the Contract. The limits of coverage under each policy maintained by the Contractor will not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies must either be through insurers authorized to write policies in the State or through a self-insurance program established and operating under the laws of the State. Unless specifically exempted in Attachment 2, Statement of Work, the following are the minimum insurance requirements applicable to this Contract:
 - i. Commercial General Liability Insurance.
By execution of this Contract, unless the Contractor is a State agency or subdivision as defined by section 768.28(2), F.S., the Contractor shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Contract. The Department and its employees and officers must be named as an additional insured on any general liability policies.
 - ii. Workers' Compensation and Employer's Liability Coverage.
The Contractor shall provide workers' compensation, in accordance with chapter 440, F.S., and employer's liability insurance with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies must cover all employees engaged in any Contract work.
 - iii. Other Insurance.
At all times during the duration of the Contract, the Contractor shall maintain any other insurance as required in Attachment 2, Statement of Work.
- b. Deductibles. The Department is exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor or subcontractor providing such insurance.
- c. Verification of Insurance. Upon execution of the Contract, the Contractor shall provide to the Department written verification of the existence and amount for each type of applicable insurance coverage. Upon receipt of a written request from the Department, the Contractor shall furnish to the Department proof of applicable insurance coverage by standard form certificates of insurance.
- d. Failure to Maintain Coverage. If the Contractor fails to maintain the required insurance coverage for any reason, the Contractor shall immediately notify the Department of such noncompliance and shall obtain coverage conforming to the requirements herein. The Contractor shall provide proof of such required coverage within fifteen (15) business days of not maintaining the required insurance coverage.

11. Termination.

- a. Termination for Convenience. The Department, by written notice to the Contractor, may terminate the Contract in whole or in part, by giving thirty (30) calendar days' written notice, when the Department

determines in its sole discretion that it is in the State's interest to do so. The Contractor will not be entitled to recover any cancellation charges or lost profits.

- b. Termination for Cause. The Department may terminate the Contract if any of the events of default described below occur. Except for defaults of subcontractors at any tier, the Contractor will not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor will not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Department. The rights and remedies of the Department in this clause are in addition to any other rights and remedies provided by law or under the Contract.
- c. Contractor Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination, and except as otherwise directed by the Department, the Contractor shall stop performing services on the date, and to the extent specified, in the notice. The Contractor shall accept no further work or new services related to the affected deliverables, and shall, as soon as practicable, but in no event longer than thirty (30) calendar days after termination, terminate any orders and subcontracts related to the terminated deliverables and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Department to the extent required, which approval or ratification shall be final for the purpose of this section. The Contractor shall submit to the Department, within ninety (90) calendar days of termination, a request for payment of completed services. Requests submitted later than ninety (90) calendar days after termination will not be honored and will be returned unpaid. The Contractor shall professionally service to conclusion, in accordance with the requirements of the Contract, all services for which the Department has paid prior to the termination date of this Contract. Should the Contractor fail to perform all services under the Contract, the Contractor shall be liable to the Department for any fees or expenses that the Department may incur in securing a substitute provider to assume completion of those services.
- d. Contractor Obligations after Termination. If at any time the Contract is canceled, terminated, or expires, and a contract is subsequently executed with a provider other than the Contractor, the Contractor has the affirmative obligation to assist in the smooth transition of Contract services to the subsequent contractor in accordance with Exit Transition requirements in Section 32, below, and Attachment 2, Statement of Work, if expressed therein.

12. Notice of Default.

If the Contractor defaults in the performance of any covenant or obligation contained in the Contract, including, without limitation, any of the events of default listed below, the Department shall provide notice to the Contractor and an opportunity to cure that is reasonable under the circumstances. This notice will state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that the Department may terminate the Contract effective as of the date of receipt of the default notice unless the Contractor cures the default within the specified cure period.

13. Events of Default.

Provided such failure is not the fault of the Department or outside the reasonable control of the Contractor, the following non-exclusive list of events, acts, or omissions, constitutes events of default:

- a. The commitment of any material breach of this Contract by the Contractor, including failure to timely deliver a deliverable, failure to perform the level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Contract;
- b. Failure to maintain adequate progress, thus endangering performance of the Contract;
- c. Failure to honor any term of the Contract;

- d. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Contractor by a state or other licensing authority;
- e. Failure to pay any entities, individuals, and the like furnishing labor or materials, or failure to make payment to any other entities as required herein in connection with the Contract;
- f. Employment of an unauthorized alien in the performance of the work, in violation of section 274A of the Immigration and Nationality Act, 8 U.S.C. section 1324a;
- g. One or more of the following circumstances, uncorrected for more than thirty (30) calendar days (unless the Contractor, including its receiver or trustee in bankruptcy, within the specified thirty (30) day period, provides to the Department adequate assurances, reasonably acceptable to the Department, of its continuing ability and willingness to fulfill its obligations under the Contract):
 - i. Entry of an order for relief under Title 11 of the United States Code (U.S.C.);
 - ii. To the extent permitted by State law, the making by the Contractor of a general assignment for the benefit of creditors;
 - iii. The appointment of a general receiver or trustee in bankruptcy of the Contractor's business or property; or
 - iv. An action by the Contractor under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation;
- h. The commitment of an intentional material misrepresentation or omission in any materials provided to the Department; and
- i. Failure to maintain the insurance required by this Contract.

14. Force Majeure.

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 acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In the case of any delay the Contractor believes is excusable, the Contractor shall notify the Department in writing of the delay or potential delay and describe the cause of the delay either: (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result; or (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 CONSTITUTES THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Department. The Contractor 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 shall 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 Department, in which case the Department may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Department with respect to products subjected to allocation; (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity; or (3) terminate the Contract in whole or in part.

15. Indemnification.

- a. Contractor Liability. The Contractor shall be fully liable for the actions of Contractor Representatives and shall fully indemnify, defend, and hold harmless the Department, and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:

- i. Personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by the Contractor or Contractor Representatives; provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the Department;
 - ii. The Contractor's breach of this Contract or the negligent acts or omissions of the Contractor; or
 - iii. Violation or infringement of a trademark, copyright, patent, trade secret, or intellectual property right; provided, however, that the foregoing obligation shall not apply to a Department misuse or modification of Contractor's products or a Department's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order.
- b. Legal Action. The Contractor's obligations under the preceding paragraph with respect to any legal action are contingent upon the Department giving the Contractor: (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at the Contractor's sole expense; and (3) assistance in defending the action at the Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the Department in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.
- c. Infringements. If any product is the subject of an infringement suit or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor shall, at its sole expense, procure for the Department the right to continue using the product or to modify it to become noninfringing. If the Contractor is not reasonably able to modify or otherwise secure the Department the right to continue using the product, the Contractor shall remove the product and refund the Department the amounts paid in excess of a reasonable rental for past use. The Department shall not be liable for any royalties.
- d. Limitation. No provision in this Contract will be construed to: 1) require the Department to hold harmless or indemnify the Contractor; 2) require the Department to insure or assume liability for the Contractor's negligence; 3) waive the Department's sovereign immunity under the laws of the State; or 4) otherwise impose liability on the Department for which it would not otherwise be responsible. Any provision, implication, or suggestion to the contrary is null and void.

16. Limitation of Liability.

The Department is only liable for claims arising from this Contract to the extent such claims are compensable under an action brought pursuant to section 768.28, F.S., which sets forth the State's limited waiver of sovereign immunity.

17. Remedies.

Nothing in this Contract will be construed to make the Contractor liable for force majeure events. Nothing in this Contract, including financial consequences for nonperformance, will limit the Department's right to pursue its remedies for other types of damages under the Contract, at law, or in equity. The Department may, in addition to other remedies available to it at law or equity, and upon notice to the Contractor, retain such monies from amounts due the Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it. The Department may set off any liability or other obligation of the Contractor or its affiliates to the Department against any payments due the Contractor under any contract with the State.

18. Waiver.

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

19. Intellectual Property.

- a. In accordance with State law, the Contractor shall not assert any rights to: 1) intellectual property created or otherwise developed specifically for the Department under this Contract or any prior agreement between the parties (which includes any deliverables); 2) intellectual property furnished by the Department; and 3) any data collected or created for the Department. The Contractor shall perfect the transfer of any such property or data to the Department upon completion, termination, or

cancellation of the Contract and prior to payment of the final invoice. Any data provided must be in a format designated by the Department.

- b. If the Department or the State has authority to assert a right in any of the property or data, the Contractor shall assist, if necessary, in the assertion of such right.
- c. Proceeds derived from the sale, licensing, marketing, or other authorization related to any such Department-controlled intellectual property rights shall belong to the Department, unless otherwise specified by applicable State law.
- d. Notwithstanding the foregoing, and unless otherwise specified in Attachment 2, Statement of Work, the Contractor's intellectual property rights that preexist this Contract will remain with the Contractor.
- e. If the Contractor fails to provide, or no longer can provide, a deliverable or service under the Contract that contains or otherwise utilizes intellectual property controlled by the Contractor, the Contractor shall grant the Department a royalty-free, paid-up, nonexclusive, perpetual license to use, modify, reproduce, distribute, publish, or release to others such Contractor-controlled intellectual property solely for use in connection with the deliverables or services under the Contract.

20. Ownership of Property.

Title to all property furnished by the Department under this Contract and deliverables provided to the Department shall remain property of the Department or become property of the Department upon receipt and acceptance. The Contractor shall perfect any transfer of the property to the Department upon completion, termination, or cancellation of the Contract prior to payment of the final invoice.

21. Nonexclusive Contract.

This Contract is not an exclusive license to provide the services described in the solicitation or the resulting Contract. The Department may, without limitation and without recourse by the Contractor, contract with other vendors to provide the same or similar services.

22. Statutory Notices.

Pursuant to sections 287.133, 287.134, and 287.137, F.S., the following restrictions are placed on the ability of persons or entities placed on the convicted vendor list, the discriminatory vendor list, or the antitrust violator vendor list:

- a. Convicted Vendor List. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- b. Discriminatory Vendor List. An entity or affiliate that has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- c. Antitrust Violator Vendor List. A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity.

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The Contractor shall notify the Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list, the discriminatory vendor list, or the antitrust violator vendor list during the life of the Contract.

23. Compliance with Federal, State, and Local Laws.

- a. Compliance Requirement. The Contractor and all Contractor Representatives shall comply with all federal, state, and local laws, rules, and regulations. This requirement includes, but is not limited to, nondiscrimination, wage and hour, social security, workers' compensation, licensure, and registration requirements.
- b. Choice of Law. This Contract will be governed by and construed in accordance with the laws of the State.
- c. Rehabilitation Act. If applicable to the supplies and services the Contractor provides to the Department, the Contractor shall ensure the electronic and information technology accessibility requirements of the Rehabilitation Act Amendments, 29 U.S.C. section 794, are met and provide a website where the compliance information on such supplies and services is available. The Electronic and Information Technology standard can be found at: <http://www.section508.gov/>.
- d. Scrutinized Companies. The following paragraph applies regardless of the dollar value of the goods or services provided:

In accordance with the requirements of section 287.135, F.S., the Contractor certifies that it is not participating in a boycott of Israel. At the Department's option, the Contract may be terminated if the Contractor is placed on the Quarterly List of Scrutinized Companies that Boycott Israel (referred to in statute as the "Scrutinized Companies that Boycott Israel List") or becomes engaged in a boycott of Israel.

The State Board of Administration maintains the "Quarterly List of Scrutinized Companies that Boycott Israel" at the following link:

<https://www.sbafla.com/fsb/FundsWeManage/FRSPensionPlan/GlobalGovernanceMandates.aspx>.

The following paragraph applies only when the goods or services to be provided are \$1 million or more:

In accordance with the requirements of section 287.135, F.S., the Contractor certifies that it is not on the Scrutinized List of Prohibited Companies (referred to in statute as the "Scrutinized Companies with Activities in Sudan List" and the "Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List") and, to the extent not preempted by Federal law, that it has not been engaged in business operations in Cuba or Syria. At the Department's option, the Contract may be terminated if such certification (or the certification regarding a boycott of Israel) is false, if the Contractor is placed on the Scrutinized List of Prohibited Companies, or, to the extent not preempted by Federal law, if the Contractor engages in business operations in Cuba or Syria.

The State Board of Administration maintains the "Scrutinized List of Prohibited Companies" under the quarterly reports section at the following link: <https://www.sbafla.com/fsb/PerformanceReports.aspx>.

- e. Disclosure Requirements. The Contractor shall comply with any applicable disclosure requirements in section 286.101, F.S. Pursuant to section 286.101(7), F.S.: "In addition to any fine assessed under [section 286.101(7)(a)], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."
- f. Department Inspection of Contractor's Records. Pursuant to section 216.1366, F.S., the Contractor shall permit the Department to inspect the Contractor's financial records, papers, and documents that are directly related to the performance of the Contract or the expenditure of state funds and any programmatic records, papers, and documents which the Department determines are necessary to monitor the performance of the Contract or to ensure that the terms of the Contract are being met. The Contractor shall provide such records, papers, and documents to the Department's Contract Manager within 10 business days after a request is made to the Contractor. This Section 23.f. only applies if the Contract is for the provision of services to the Department.

24. Employment Eligibility Verification.

- a. The Contractor and its subcontractors shall register with and use the E-Verify system as defined in section 448.095, F.S., to verify the work authorization status of all newly hired employees. The Contractor agrees to provide to the Department proof of the Contractor's enrollment in the E-Verify System within 5 days of the Department's request for such proof.
- b. The Contractor shall obtain an affidavit from each subcontractor as defined in section 448.095, F.S., that states that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, as defined by section 448.095, F.S. The Contractor shall maintain a copy of any such affidavits for the duration of the Contract and shall make such records available to the Department upon request.
- c. The Contractor shall be responsible for the retention of any records relating to employment eligibility verification. Those records are exempt from the inspection and copying requirements of chapter 119, F.S.
- d. Pursuant to section 448.095(2)(c)1., F.S., if the Contractor has a good faith belief that any subcontractor has knowingly violated section 448.09(1), F.S., the Contractor shall terminate the subcontract. Pursuant to section 448.095(2)(c)2., F.S., if the Department has a good faith belief that a subcontractor knowingly violated section 448.095(2), F.S., the Department shall promptly notify the Contractor and order the Contractor to immediately terminate subcontract.
- e. Pursuant to section 448.095(2)(c)1., F.S., if the Department has a good faith belief that the Contractor has knowingly violated section 448.09(1), F.S., the Department shall terminate the Contract. If the Department terminates the Contract pursuant to section 448.095(2)(c), F.S., the Contractor shall reimburse the Department for any additional costs the Department incurs as a result of terminating the Contract.

25. Data.

- a. Data Centers. Except as otherwise provided in Addendum B, Data Security Requirements, or, if applicable, its Exhibit 1, the Contractor shall only use data centers located in the United States when processing and storing Non-Open Data under this Contract. For purposes of this paragraph, "Non-Open Data" means any data that is in the possession or under the control of the State or the Contractor that is confidential information exempt from public disclosure pursuant to chapter 119, F.S.; personal information enumerated in section 501.171(1)(g), F.S.; and/or any data that is restricted from public disclosure based on federal or state laws and regulations, including, but not limited to, those related to privacy, confidentiality, security, personal health, business or trade secret information, and exemptions from state public records laws. Non-Open Data also includes data that any state agency, the Department of Legal Affairs, the Department of Financial Services, or the Department of Agriculture and Consumer Services is statutorily authorized to assess a fee for its distribution.
- b. Requirements of Section 501.171, F.S. If the Department shares data that is covered by section 501.171, F.S., with the Contractor in the process of fulfilling this Contract, the Contractor is responsible for fulfilling the requirements placed on the Department by section 501.171, F.S., at the Contractor's expense, if the Contractor is responsible for a breach of this data. Notwithstanding any limitations on liability addressed in the Contract, if the Contractor fails to fulfill the requirements placed on the Department by section 501.171, F.S., the Contractor shall reimburse the Department for all costs incurred in fulfilling such requirements.

26. Claims for Damages.

Jurisdiction for any damages arising under the terms of the Contract will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. The parties waive their right to a jury trial. Except as otherwise provided by law, the parties agree to be responsible for their own attorney's fees incurred in connection with disputes arising under the terms of this Contract.

27. Lobbying and Integrity.

The Contractor agrees that funds received by it under this Contract will not be expended for the purpose of lobbying the Legislature, the judicial branch, or a State agency in violation of sections 11.062 or 216.347, F.S. Pursuant to the requirements of section 287.058(6), F.S., during the Contract term, the Contractor may

lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the Contract.

The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly: (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty; or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Department's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General or other authorized State official 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: three (3) years after the expiration of the Contract or the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs will include, but they shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor will not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

28. Independent Contractor.

The Contractor is an independent contractor and is not an employee or agent of the Department.

29. Subcontracting.

- a. Consent. Unless otherwise specified in Attachment 2, Statement of Work, all services contracted for are to be performed solely by the Contractor and may not be subcontracted or assigned without the prior written consent of the Department.
- b. Replacement. The Department may, for cause, require the replacement of any Contractor Representative. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.
- c. Access. The Department may, for cause, deny access to the Department's secure information or any facility by any Contractor Representative.
- d. Continuing Obligation. The Department's actions under paragraphs b. or c. shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract.
- e. Meetings. The Department will not deny Contractor Representatives access to meetings within the Department's facilities, unless the basis of the Department's denial is safety or security considerations.

30. Guarantee of Parent Company.

If the Contractor is a subsidiary of another corporation or other business entity, the Contractor asserts that its parent company will guarantee all the obligations of the Contractor for purposes of fulfilling the obligations of the Contract. If the Contractor is sold during the period the Contract is in effect, the Contractor agrees that it will be a requirement of sale that the new parent company guarantee all the obligations of the Contractor.

31. Survival.

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Contract, including without limitation, the obligations regarding confidentiality, proprietary interests, Exit Transition Services, records retention, and public records, will survive termination, cancellation, or expiration of this Contract.

32. Exit Transition Services.

If not otherwise addressed in the Statement of Work, the Contractor has the affirmative obligation to provide to the Department, or its designee, all reasonable services necessary for the transfer of knowledge regarding the services and deliverables provided under the Contract (Exit Transition Services) to facilitate the orderly transfer of such services to the Department or its designee. If Exit Transition Services are necessary, such services may continue for up to six (6) months after termination, expiration, or cancellation of the Contract, at no cost to the Department.

33. Third Parties.

The Department shall not be deemed to assume any liability for the acts, omissions to act, or negligence of the Contractor or Contractor Representatives, nor shall the Contractor disclaim its own negligence to the Department or any third party. This Contract does not and is not intended to confer any rights or remedies upon any person other than the parties. If the Department consents to a subcontract, the Contractor will specifically disclose that this Contract does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Contract.

34. Severability.

If a court of competent jurisdiction deems any term or condition of this Contract void or unenforceable, the other provisions are severable to that void or unenforceable provision and will remain in full force and effect.

35. Employment of State Employees.

During the term of this Contract, the Contractor shall not knowingly employ, subcontract with or subgrant to any person (including any nongovernmental entity in which such person has any employment or other material interest as defined in section 112.312(15), F.S.), in connection with this Contract, who has participated in the performance or procurement of this Contract except as provided in section 112.3185, F.S.

36. Contractor Representatives.

All Contractor Representatives shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, the Contractor shall furnish a copy of technical certification or other proof of qualification. All Contractor Representatives must comply with all security and administrative requirements of the Department and with all controlling laws and regulations relevant to the services they are providing under the Contract. The State may conduct, and the Contractor shall cooperate in, a security background check or other assessment of any Contractor Representative. The Department may refuse access to, or require replacement of, any Contractor Representative for cause, including, but not limited to, lack of technical or training qualifications, quality of work, change in security status, or noncompliance with the Department's security or administrative requirements. Such refusal of access to, or requirement to replace, any Contractor Representative shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The Department may reject and bar from any facility, for cause, any Contractor Representative.

37. Suspension of Work.

The Department may in its sole discretion suspend any or all activities under the Contract, at any time, when it is in the best interests of the State to do so. The Department shall provide the Contractor written notice outlining the particulars of suspension. Examples of reasons 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. Within ninety (90) calendar days, or any longer period agreed to by the Contractor, the Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Contract. Suspension of work shall not entitle the Contractor to any additional compensation.

38. Advertising.

- a. Except for disclosures and notices made pursuant to law, and subject to chapter 119, F.S., the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Department (which will not be unreasonably withheld), including, but not limited to, mentioning the Contract in a press release or other promotional material, identifying the Department or

the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the Department or the State in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representatives. This provision shall not apply to the Contractor's marketing materials that merely list the Department as a client or to the re-publication of any material that already has been placed in the public domain.

- b. The Contractor shall permanently refrain from using or mentioning its association with the Department in advertisements, letterhead, business cards, etc. The Contractor's services to the Department may be generally stated and described in the Contractor's professional resume. The Contractor may not give the impression in any event or manner that the Department recommends or endorses the Contractor.
- c. Notwithstanding the foregoing, the Contractor shall not be deemed to have waived any right or otherwise impeded its ability to defend itself factually against any media reports or allegations.
- d. The provisions of this section also apply to Contractor Representatives and the Contractor shall ensure that such restrictions are appropriately conveyed to those persons to ensure enforceability.

39. Assignment.

Unless otherwise authorized by law, the Contractor shall not sell, assign, or transfer any of its rights, duties, or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Department. If an assignment occurs, the Contractor remains secondarily liable for performance of the Contract, unless the Department expressly waives such secondary liability. The Department may assign the Contract with prior written notice to the Contractor of its intent to do so.

40. Cooperation with Inspector General.

The Contractor understands its duty, pursuant to section 20.055(5), F.S., to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. The Contractor will comply with this duty and ensure that its subcontracts issued under this Contract, if any, impose this requirement, in writing, on its subcontractors.

41. Execution in Counterparts and Authority to Sign.

This Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. Each person signing this Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

42. Travel Reimbursement.

Any travel expenses allowable under this Contract must be submitted in accordance with section 112.061, F.S.

43. MyFloridaMarketPlace Transaction Fee.

The State has instituted MyFloridaMarketPlace, a statewide eProcurement System. Pursuant to section 287.057(24), F.S., all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State. 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, F.A.C. By submission of these reports and corresponding payments, the Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee. The 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 nonrefundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the agreement. Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering repurchase costs from the Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES SHALL BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.**

44. Use of State Funds to Purchase or Improve Real Property.

Any State funds provided for the purchase of or improvements to real property are contingent upon the Contractor granting to the State a security interest in the property in the amount of State funds provided for

five (5) years from the date of purchase or the completion of the improvements or as further required by law.

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

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

It is expressly understood and agreed that any articles which are the subject of, or required to carry out, this contract shall be purchased from the corporation identified under chapter 946, Florida Statutes, in the same manner and under the same procedures set forth in section 946.515(2) and (4), 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 this agency insofar as dealings with such corporation are concerned.

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

46. Products Available from the Blind or Other Handicapped (RESPECT).

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

It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to chapter 413, 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>.

47. Record Retention.

The Contractor shall retain records demonstrating its compliance with the terms of the Contract five (5) years after the expiration of the Contract and all pending matters, or the period required by the General Records Schedules maintained by the Florida Department of State (available at: <https://dos.myflorida.com/media/703328/gsl-sl-2020.pdf>), whichever is longer. If the Contractor is required to comply with section 119.0701, F.S., then compliance with the retention of records in accordance with section 119.0701(2)(b)4., F.S., will fulfill the above stated requirement. If the Contractor's record retention requirements terminate prior to the requirements stated herein, the Contractor may meet the Department's record retention requirements for this Contract by transferring its records to the Department at that time, and by destroying duplicate records in accordance with section 501.171(8), F.S., and, if applicable, section 119.0701, F.S. The Contractor shall adhere to established information destruction standards such as those established by the National Institute of Standards and Technology Special Publication 800-88, "Guidelines for Media Sanitization" (2014). See <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-88r1.pdf>.