

**Attachment D
Sample FDEM Contract**

**STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT**

Contract Number: _____

ITN#, RFP#, ITB#, RFQ#: _____

CONTRACT

THIS AGREEMENT is entered into by and between the State of Florida, Division of Emergency Management, (hereinafter, "Division"), and _____ (hereinafter, "Contractor" or "Vendor"), an entity duly authorized to conduct business in the State of Florida. In consideration of the mutual promises contained in this Agreement (the terms "Agreement" and "Contract" are used interchangeably herein), the parties agree as follows:

1. PURPOSE OF THE AGREEMENT

- A. The purpose of this Agreement is to provide products and/or services as described in the Scope of Work attached hereto as Exhibit "A" and made part hereof.
- B. No work shall commence until both parties have signed the Agreement.
- C. Order of Precedence. The following exhibits, including the entirety of request for proposal ("Solicitation"), are incorporated into and made a part of this Agreement. In the event of a conflict in terms or provisions of these exhibits or between any of the components of this Agreement, the order of precedence for resolving such conflict shall be as follows with 1) being the highest:
 - 1) The express terms of this Agreement, minus Exhibits;
 - 2) Additional Contract Terms and Conditions ("Special Conditions"), if any, Modifying Florida PUR 1000 General Contract Conditions;
 - 3) State of Florida PUR 1000 General Contract Conditions;
 - 4) Exhibit A - "Scope of Work";
 - 5) Exhibit B - "Price Sheet";
 - 6) Exhibit C - [FOR ADDITIONAL EXHIBITS];
 - 7) Addenda, in reverse order of issuance.

2. TERM

- A. The term shall begin upon execution of the Agreement by both parties and, unless terminated earlier in accordance with the provisions of section 8 of this Agreement, shall end on _____.

- B. If the parties relied upon a State Term Contract in order to enter into this Agreement, then: (1) any renewal or extension shall not exceed the expiration of the underlying State Term Contract by more than twelve (12) months; and, (2) no renewal or extension shall occur if the underlying State Term Contract expires prior to the effective date of any renewal or extension.
- C. In accordance with section 287.057(13), Florida Statutes, and subject to the limitations outlined above in subparagraph 2.B. of this Agreement, the Division and the Contractor may renew this Agreement, in whole or in part, for a period that may not exceed three (3) years or the term of this Agreement, whichever is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. Additionally, any renewal (1) must be in writing and signed by both parties; (2) is contingent upon satisfactory performance evaluations; and (3) is subject to availability of funds.

OR

- C. Because the procurement solicitation did not specify prices for renewal years, this Agreement, pursuant to section 287.057(13), Florida Statutes, may not be renewed for any period of time. Pursuant to section 287.057(12), Florida Statutes, the Division may extend this Agreement for a period not to exceed 6 months. Any extension is subject to the same terms and conditions as set forth in this Agreement. The Division may only extend this Agreement once, unless events beyond the control of the Contractor cause the Contractor's failure to meet the criteria for contract completion.

OR

- C. Because this Agreement resulted from an emergency procurement under section 287.057(3)(a), Florida Statutes, this Agreement may not be renewed per section 287.057(13), Florida Statutes.

OR

- C. Because this Agreement resulted from single source procurement under section 287.057(3)(c), Florida Statutes, this Agreement may not be renewed per section 287.057(13), Florida Statutes.

OR

- C. This Agreement was procured under the authority of Executive Order _____ and may not be renewed.

3. PERFORMANCE

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

- B. The Contractor shall immediately notify the Division in writing if its ability to perform is compromised in any manner during the term of this Agreement.
- C. The Contractor agrees to perform all tasks and provide deliverables as set forth in the Scope of Work and all contractual documents attached to this Agreement. The Division shall be entitled at all times to be advised, at its request, as to the status of work being done by the Contractor and of the details thereof. Coordination shall be maintained by the Contractor with representatives of the Division, or of other agencies interested in the project on behalf of the Division.
- D. If the Division determines that the performance of the Contractor is unsatisfactory, the Division will notify the Contractor of the deficiency to be corrected, which correction shall be made within a time-frame specified by the Division. The Contractor shall, within the time specified in the contractual documents after notice from the Division, provide the Division with a corrective action plan describing how the Contractor will address all issues of contractual non-performance, unacceptable performance, and failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Division, the Contractor will be assessed a non-performance retainage equivalent to 10% of the total invoice amount or as specified in the contractual documents. The retainage will be applied to the invoice for the then-current billing period. The retainage will be withheld until the Contractor resolves the deficiency. If the deficiency is subsequently resolved, the Contractor may bill the Division for the retained amount during the next billing period. If the Contractor is unable to resolve the deficiency, the funds retained may be forfeited at the end of the agreement period.
- E. The Division reserves the right to inspect, at any reasonable time and with prior notice, the equipment, product, plant, or other facilities of the Contractor to assess conformity with Contract requirements, and to determine whether they are adequate and suitable for proper and effective Contract performance.
- F. Unless otherwise prohibited by law, the Division may require the Contractor to furnish, without additional cost to the Division, a performance bond or irrevocable letter of credit or other form of security for the satisfactory performance of work hereunder. The Division shall determine the type and amount of security.
- G. Upon request, the Contractor shall furnish literature reasonably related to the product offered. Examples include, but are not limited to, user manuals, price schedules, catalogs, and descriptive brochures, etc.
- H. If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, then the Contractor shall immediately notify the Division in writing, indicating the specific restriction. The Division reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Division.

- I. Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers; additionally, no extra charges shall be applied for boxing, crating, packing, or insurance. All containers and packaging shall become and remain the Division's property. All purchases are F.O.B. destination, transportation charges prepaid. A complete packing list must accompany each shipment. Transportation of goods shall be F.O.B Destination to any point within thirty (30) days after the Division places an Order. The Division assumes no liability for merchandise shipped to anywhere other than the specified destination. Items received in excess of quantities specified may, at the Division's option, be returned at the Contractor's expense. Substitutions are not permitted. The Contractor, within five (5) days after receiving a purchase order, shall notify the Division of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.

- J. Matters of inspection and acceptance are addressed in section 215.422, Florida Statutes. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Division shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and, provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When the Division rejects a product, the Contractor shall remove it from the premises within ten (10) days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten (10) days shall be deemed abandoned by the Contractor, and the Division shall have the right to dispose of it as its own property. The Contractor shall reimburse the Division for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

- K. Where installation is required, the Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated in this Agreement. The Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. The Contractor shall protect the site from damage and shall repair damages or injury caused during installation by the Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. The Contractor shall perform installation work so as to cause the least inconvenience and interference with the Division, and with proper consideration for others on site. Upon completion of the installation, the location and surrounding area of work shall be left

clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

- L. The Contractor shall comply with all applicable state and Federal rules and regulations when performing under this Agreement. The Contractor shall comply with all Federal Emergency Management Agency (FEMA) rules and regulations applicable to services rendered under this Agreement

4. COMPENSATION AND PAYMENT

- A. The total funding amount of this Agreement for the purchase of commodities or the performance of services as described in Exhibit "A" of this agreement is shown in Exhibit "B".
- B. As required by section 287.0582, Florida Statutes, if this Agreement binds the Division 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 this contract is contingent upon an annual appropriation by the Legislature."
- C. The parties acknowledge that Division's payments required pursuant to the terms of this Agreement are subject to and contingent upon the review and approval of the Chief Financial Officer pursuant to his authority as set forth in Article IV, Section 4 of the Florida Constitution ("The chief financial officer shall serve as the chief fiscal officer of the state, and shall settle and approve accounts against the state, and shall keep all state funds and securities.") as well as section 17.03, Florida Statutes ("The Chief Financial Officer of this state, using generally accepted auditing procedures for testing or sampling, shall examine, audit, and settle all accounts, claims, and demands, whatsoever, against the state, arising under any law or resolution of the Legislature, and issue a warrant directing the payment out of the State Treasury of such amount as he or she allows thereon.").
- D. Travel expenses are not reimbursable unless specifically authorized in writing and shall be reimbursed only in accordance with section 112.061, Florida Statutes.
- E. The Contractor will be paid upon submission of properly certified invoice(s) to the Division after delivery and acceptance of commodities or services is confirmed in writing by the Division. Invoices shall contain detail sufficient for a proper pre-audit and post-audit thereof and shall contain any Purchase Order and the Vendor's Federal Employer Identification Number or Social Security Number.
- F. No payment requirements shall start until a properly completed invoice is provided to the Division, and subsequently inspected and approved. Invoices that must be returned to the Contractor due to preparation errors will result in a delay in payment.
- G. The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. All taxes will be borne by the Contractor.

H. The Contractors providing goods and services to the Division should be aware of the following time frames:

- 1) Pursuant to section 215.422(1), Florida Statutes, an invoice submitted to the Division shall be recorded in the financial systems of the State, approved for payment by the Division, and filed with the Chief Financial Officer not later than twenty (20) days after receipt of the invoice and receipt, inspection, and approval of the goods or services, except that in the case of a bona fide dispute the invoice recorded in the financial systems of the State shall contain a statement of the dispute and authorize payment only in the amount not disputed.
- 2) Notwithstanding the 20-day requirement above, the five (5) working day requirement, set forth in section 215.422(1), Florida Statutes, to inspect and approve goods or services rendered under this Agreement shall not apply. The Division will make a good faith effort to abide by the five (5) working day requirement but shall not be penalized if the inspection and approval take more than five (5) working days. Items may be tested for compliance with specifications. Items delivered not conforming to specifications may be rejected and returned at the Contractor's expense. Any resulting increase in cost will be charged against the Contractor.
- 3) Pursuant to section 215.422(3)(b), Florida Statutes, the Division shall issue payment to the Contractor within forty (40) days after the invoice has been received, inspected, and approved. Failure to issue the warrant within forty (40) days may result in the Division paying interest at the rate established under section 55.03(1), Florida Statutes. The Division shall not be held to the five (5) working day inspection and approval requirement in section 215.442(1), Florida Statutes.

I. Transaction Fee. The State of Florida, through the Department of Management Services (DMS), has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to subsection 287.057 (22), Florida Statutes, all payments shall be assessed a transaction fee of seven-tenths of one percent (0.7%), which the Contractors shall pay to the State. Online filing is available at <http://dms.myflorida.com/mfmp>. 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 self-report and pay the transaction fee pursuant to rule 60A-1.031 (2), Florida Administrative Code. 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 purpose of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a transaction fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of this Agreement. Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering re-procurement costs from the Contractor in addition to all outstanding

fees. A CONTRACTOR'S DELINQUENCY IN PAYING TRANSACTION FEES MAY RESULT IN BEING EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.

- J. The Contractor shall report and pay the transaction fee on a quarterly calendar basis using the Department of Management Service's Form PUR 3776, which is incorporated by reference. Any misrepresentation shall be punishable under law, including but not limited to: Chapter 817, Florida Statutes.
- K. The Contractor may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State Agencies. The Division is responsible for all payments under the Agreement. The Division's failure to pay, or delay in payment, shall not constitute a breach of the Agreement and shall not relieve the Contractor of its obligations to the Division.
- L. A Vendor Ombudsman, whose duties include acting as an advocate for Vendors who may be experiencing problems in obtaining timely payment(s) from an Agency may be contacted at 850-413-5516 or by calling the State Comptroller's Hotline, 1-800-848-3792.
- M. The Division, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Division shall require a statement from the Office of Policy and Budget that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executed only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years.
- N. All refunds or repayments due to the Division under this Agreement shall be made payable to the order of the "Division of Emergency Management" and mailed directly to the attention of: **Cashier, Division Finance, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399**. The Contractor shall also notify the Division Program Manager (identified in section 13. A.) that it has issued a refund to the Division.

5. SURETY BOND

- This provision applies.
- This provision does not apply.

- A. A surety bond shall be required of the successful bidder in an amount equal to _____ dollars (\$ _____). If the total value of the Agreement later exceeds the initial surety bond amount, the Contractor shall timely increase the surety bond amount to match that new amount. The surety bond must comply with section 287.0935, Florida Statutes. The surety on such bond shall be a surety company authorized to do business in the State. The Surety Bond will be at no cost to the Division. All bonds shall be payable to the Division and conditioned for the

prompt, faithful, efficient, and full performance of the Agreement to provide products and services specified in the Agreement during an emergency declared pursuant to section 252.36, Florida Statutes, and within the time period specified in the Agreement.

- B. The surety bond provided under this Section shall be used to the extent necessary to satisfy the damage claims made by the State, to ensure timely performance by the Contractor of the Agreement, and to ensure prompt payment of all persons defined in section 713.01, Florida Statutes, furnishing labor, materials, equipment, supplies, services, and licenses to or for the Contractor in its performance of this Agreement. In no event shall the surety bond be construed as a penalty bond.
- C. Before beginning any work under the Agreement, the Contractor shall maintain a copy of the payment and performance bond required under this section at its principal place of business and at the job-site office, if one is established, and the Contractor shall provide a copy of the payment and performance bond within five (5) days after receiving a written request for the bond. A copy of the payment and performance bond required under this section may also be obtained directly from the Division by making a request pursuant to Chapter 119, Florida Statutes. A claimant has a cause of action against the Contractor and surety for the amount due him or her, including unpaid finance charges due under the claimant's Agreement. The action may not involve the Division in any expense.
- D. A claimant, except a laborer, who is not in privity with the Contractor shall, before commencing or not later than ninety (90) days after commencing to furnish labor, materials, or supplies for the performance of the work, furnish the Contractor with a notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the Contractor and who has not received payment for his or her labor, materials, or supplies shall deliver to the Contractor and to the surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. The notice of nonpayment may be served at any time during the progress of the work or thereafter but not before forty-five (45) days after the first furnishing of labor, services, or materials, and not later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, not later than ninety (90) days after the date that the rental equipment was last on the job site available for use. An action by a claimant, except a laborer, who is not in privity with the Contractor for the labor, materials, or supplies may not be instituted against the Contractor or the surety unless both notices have been given. Notices required or permitted under this section may be served in any manner provided in section 713.18, Florida Statutes.
- E. An action must be instituted by a claimant, whether in privity with the Contractor or not, against the Contractor or the surety on the payment bond or the payment provisions of a combined payment and performance bond within three-hundred-sixty-five (365) days after the final acceptance of the Contractor's work by the Division. A claimant may not waive in advance his or her right to bring an action under the bond against the surety. In any action brought to enforce a claim against a payment bond under this section, the prevailing party is entitled to recover a reasonable fee for the

services of his or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions.

- F. The Division shall have no liability for anticipated profits for unfinished work on an Agreement which has been determined to be in default.
- G. The Division may recover from the Contractor, amounts paid by the Division for damages suffered by third parties as a result of the Contractor's failure to complete the project within the time stipulated in the Agreement or within such additional time as may have been granted by the Division, unless the failure to timely complete the project was caused by the Division's act or omission. This provision is in addition to of the liquidated damages resulting from the failure of the Contractor to complete the project within the time stipulated in the Agreement or within such additional time as may have been granted by the Division. However, nothing herein shall create a cause of action against the Division.
- H. The bond shall be subject to the additional obligation that the principal and surety executing the same shall be liable to the state in a civil action instituted by the Division, or any officer of the state authorized in such cases, for double any amount in money or property the state may lose or be overcharged or otherwise defrauded of, by reason of any wrongful or criminal act, if any, of the Contractor, the Contractor's agent, or employees.
- I. Within thirty (30) days of the execution of this Agreement, and by March 1st of each year following the Effective Date of this Agreement, the Contractor shall provide the Division with a surety bond continuation certificate or other acceptable verification that the bond is valid and has been renewed for an additional year.
- J. As an alternative to the surety bond described in this Section and at the sole discretion of the Division, the Contractor may use an irrevocable letter of credit on an annually renewable basis, which in the reasonable judgment of the Division effectuates a surety bond. By March 1st of each year following the Effective Date of this Agreement, the Division may determine, in its sole discretion, whether to discontinue the irrevocable letter of credit in favor of the surety bond described in this Section.

6. PERFORMANCE BOND

- This provision applies.
- This provision does not apply.

- A. Within 72 hours of contract activation, Contractor will deliver to the Division's Contract Manager, a Performance Bond or Irrevocable Letter of Credit in the amount equal to the lesser of \$5,000,000 dollars or the average annual price of the contract (averaged from the initial contract term pricing) at no cost to the Division. The bond or letter of credit shall be used to guarantee at least satisfactory performance by Contractor throughout the term of the contract (including renewal years). At any time after contract execution, the Contractor's bond may be reduced, or the requirement removed, for the remainder of the term (including any renewal periods).

B. The bond shall be maintained throughout the term of the Contract, issued by a reliable surety company which is licensed to do business in the State of Florida, as determined by the Division, and must include the following conditions:

- 1) Obligee: The Division shall be named as the beneficiary of the bond. The insurer or bonding company shall pay losses suffered by the State directly to the Division.
- 2) Notice of Attempted Change: The Contractor shall provide the Division prior written notice or immediate notice upon knowledge of any attempt to cancel or to make any other material change in the status, coverage or scope of the required bond or of the Contractor's failure to pay bond premiums.
- 3) Premiums: The Division shall not be responsible for any premiums or assessments on the bond.
- 4) Purpose of Bond: The performance bond is to protect the Division and the State against any loss sustained through failure of the Contractor's performance of the Services in accordance with the Contract. No payments shall be made to the Contractor until the performance bond is in place and approved by the Division in writing.

7. INDEMNITY AND PAYMENT FOR CLAIMS

A. INDEMNITY. The Contractor shall be fully liable for the actions of its agents, employees, partners, assignees, or subcontractors and shall fully indemnify, defend, and hold harmless the State and the Division, and their officers, agents, and employees, from suits, actions, damages, and costs, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by the Contractor, its agents, employees, partners, or subcontractors; provided, however, the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or the Division.

Further, the Contractor shall fully indemnify, defend, and hold harmless the State from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right; provided, however, that the foregoing obligation shall not apply to the Division's misuse or modification of the Contractor's products or the Division's operation or use of the Contractor's products in a manner not contemplated by the Agreement. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may, at its sole expense, procure for the Division the right to continue using the product, or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure for the Division the right to continue using the product, the Contractor shall remove the product, and refund to the Division the amounts paid in excess of a reasonable rental for past use. The Division shall not be liable for any royalties.

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

Any Contractor which is a State agency or subdivision, as defined in section 768.28, Florida Statutes, agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any Contractor to which sovereign immunity applies.

Nothing herein shall be construed as consent by a State agency or subcontractor of the State of Florida to be sued by third parties in any matter arising out of any contract.

- B. **LIMITATION OF LIABILITY.** For all claims against the Contractor under any contract or purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the contract or purchase order, or two times the charges rendered by the Contractor under the purchase order. This limitation shall not apply to claims arising under the Indemnity paragraph contained in this agreement.

Unless otherwise specifically enumerated in this Agreement or the resulting purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Division 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 to 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.

OR

LIMITATION OF LIABILITY. For all claims against the Contractor under this Agreement, and regardless of the basis on which the claim is made, the Contractor's liability under this Agreement for direct damages shall be limited to the greater of \$1,000,000, the dollar amount of the Agreement, the dollar amount of the purchase order(s) issued to Contractor under this Agreement, or two times the charges rendered by the Contractor under any purchase order(s) issued under this Agreement. This

limitation shall not apply to claims arising under the Indemnity paragraph contained in this Agreement.

Unless otherwise specifically enumerated in this Agreement or resulting purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Division 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.

- C. PAYMENT OF CLAIMS. The Contractor guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Contractor or any subcontractor, in connection with the Agreement.
- D. LIABILITY INSURANCE. The Contractor shall carry and keep in force during the term of this Agreement a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$150,000.00 per person and \$300,000.00 each occurrence, and property damage insurance of at least \$150,000.00 each occurrence, for the services to be rendered in accordance with this Agreement.

Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. Upon request, the Contractor shall provide certificate of insurance. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor liability and obligations under the Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.

OR

LIABILITY INSURANCE. The Contractor shall carry and keep in force during the term of this Agreement insurance policies with a company or companies authorized to do business in Florida. For the services to be rendered in accordance with this Agreement, the Contractor agrees to provide the following proof of insurance: (1) General liability insurance in the amount of at least five million dollars (\$5,000,000) per occurrence; (2) Business motor vehicle liability insurance with combined bodily injury limits of at least \$250,000 per person and \$500,000 each occurrence, and property damage insurance of at least \$250,000 each occurrence; (3) Pollution liability insurance in the amount of at least one million dollars (\$1,000,000); and (4) Other insurance policies necessary for the services to be rendered in accordance with this Agreement.

Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. Upon request, the Contractor shall provide certificate of insurance. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor liability and obligations under the Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.

E. WORKERS COMPENSATION. The Contractor shall maintain Workers' Compensation insurance as required under the Florida Workers' Compensation Law.

8. COMPLIANCE WITH LAWS:

A. The laws of the State of Florida shall govern this Agreement. The Division and the Contractor submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to this Agreement. Further, the Contractor hereby waives any and all privileges and rights relating to venue it may have under Chapter 47, Florida Statutes, and any and all such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those grounded on convenience. The Contractor hereby submits to venue in the county chosen by the Division, to wit: Leon County, Florida.

B. The Contractor must be registered with the Florida Department of State, Division of Corporations. Online-filing is available at: <http://www.sunbiz.org>.

C. The Contractor shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Contractor in conjunction with this Agreement. In accordance with section 119.0701(2), Florida Statutes, a vendor providing contractual services and acting on behalf of the Division must:

- 1) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
- 2) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- 3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- 4) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

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: (850) 815-4156, Records@em.myflorida.com, or 2555 Shumard Oak Boulevard, Tallahassee, FL 32399.

- D. Pursuant to section 287.058(1)(c), Florida Statutes, the Division may unilaterally cancel a contract if the vendor refuses to allow public access to all non-exempt documents, papers, letters, or other material made or received by the contractor in conjunction with the contract.
- E. The Contractor agrees that it shall make no statements, press releases, or publicity releases concerning this Agreement 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 this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the Division's Contract Manager or the Division's designated contact person and securing prior written consent. The Contractor shall maintain confidentiality of all confidential data, files, and records related to the services and/or commodities provided pursuant to this Agreement and shall comply with all state and federal laws, including, but not limited to sections 381.004, 384.29, 392.65, and 456.057, Florida Statutes. The Contractor's confidentiality procedures shall be consistent with the most recent version of the Division's security policies, protocols, and procedures. The Contractor shall also comply with any applicable professional standards with respect to confidentiality of information.
- F. The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. For example, the Contractor shall comply with Section 247A of the Immigration and Nationality Act, the Americans with Disabilities Act, Health Insurance Portability and Accountability Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Pursuant to Section 287.058(1), Florida Statutes, the provisions of section 287.058(1)(a)-(c), and (i), Florida Statutes, are hereby incorporated by reference, to the extent applicable.
- G. The Contractor should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.
- H. All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National

Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.

- I. If regulated by the Florida Department of Business and Professional Regulation, the Contractor and its employees shall be bound by the standard of conduct provided in applicable Florida Statutes and applicable rules of the Board of Business and Professional Regulation as they relate to work performed under this Agreement. The Contractor further covenants and agrees that when a former State employee is employed by the Contractor, the Contractor will require strict adherence by a former State employee to section(s) 112.313 and 112.3185, Florida Statutes, as a condition of employment for said former State employee. These statutes will, by reference, be made a part of this Agreement as though set forth in full. The Contractor agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter for the work performed under this Agreement.
- J. A person or affiliate who has been placed on the convicted Contractor 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 bids, proposals or replies 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, Florida Statutes, for Category Two for a period of thirty-six (36) months following the date of being placed on the convicted Contractor list.
- K. An entity or affiliate who has been placed on the discriminatory Vendor list may not submit a bid, proposal or reply on a contract to provide any goods or service 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 bids, proposals or replies on leases of real property to a public entity, may not be awarded or perform work as a Vendor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.
- L. The Division shall verify the Contractor and any subcontractors against the Federal Excluded Parties List System to ensure the Contractor or subcontractor is not disbarred or excluded from receiving Federal contracts.
- M. The Contractor shall E-Verify the employment status of all employees and subcontractors to the extent permitted by federal law and regulation. The Division shall consider the employment by any Contractor of unauthorized aliens a violation of section 274A (e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. Furthermore, the Contractor agrees to utilize the U.S. Department of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all new employees hired during the term of this Agreement

for the services specified in this Agreement. The Contractor shall also include a requirement in subcontracts that the subcontractor shall utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Agreement.

- N. Pursuant to section 216.347, Florida Statutes, the Contractor shall not expend any State funds for the purpose of lobbying the State Legislature, the Judiciary, or an Agency.
- O. In accordance with section 20.055(5), Florida Statutes, the Contractor shall cooperate fully with the Inspector General in any investigation, audit, inspection, review, or hearing conducted pursuant to the Inspector General's statutory authority. Additionally, upon request of the Inspector General or any other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to this Agreement. The Contractor shall retain such records in accordance with 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 shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.
- P. 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 the above 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.
- Q. The Division 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), Florida Statute, 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.
- R. Pursuant to section 287.05805, Florida Statutes, if state funds are being used for the purchase of or improvements to real property pursuant to the terms of this Agreement, the state funds are contingent upon the Contractor or political subdivision granting to

the state a security interest in the property at least to the amount of state funds provided for at least five (5) years from the date of purchase or the completion of the improvements or as further required by law.

9. COPYRIGHT, PATENT AND TRADEMARK

EXCEPT AS PROVIDED BELOW, ANY AND ALL PATENT RIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY RESERVED TO THE STATE OF FLORIDA; AND, ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE SUB-RECIPIENT TO THE STATE OF FLORIDA.

- A. All plans, specifications, computer files, and reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived from them shall be the exclusive property of the Division without restriction or limitation on their use and shall be made available, upon request, to the Division at any time during the performance of such services and/or upon completion or termination of this Agreement.
- B. The Contractor shall not copyright any material and products or patent any invention developed under this Agreement. Any and all patent rights and any and all copyrights accruing under or in connection with the performance of this Agreement are hereby reserved to the State of Florida. If the Contractor brings, to the performance of this Agreement, a pre-existing patent or copyright, the Contractor shall retain all rights and entitlements to that pre-existing patent or copyright, unless the Agreement provides otherwise.
- C. If any discovery or invention arises out of, is developed in the course of, or arises as a result of work or services performed under this Agreement, or in any way connected with this Agreement, the Contractor shall refer the discovery or invention to the Division for a determination as to whether patent protection will be sought in the name of the State of Florida. Any and all patent rights accruing under, or in connection with, the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Contractor shall notify the Division. Any and all copyrights accruing under or in connection with the performance under this Agreement are transferred by the Contractor to the State of Florida.
- D. Within thirty (30) days of the execution of this Agreement, the Contractor shall disclose all intellectual properties relevant to the performance of this Agreement which he or she knows, or should know, could give rise to a patent or copyright. The Contractor shall retain all rights and entitlements to any pre-existing intellectual property which is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under the above subsection C, have the right to all patents and copyrights which occur during performance of the Agreement.

10. SUSPENSION OF WORK AND TERMINATION OF THE AGREEMENT

- A. **SUSPENSION.** The Division may, in its sole discretion, suspend any or all activities under this Agreement, at any time, when in the best interests of the State to do so. The Division shall provide the Contractor with written notice outlining the particulars of suspension. Examples of “the best interests of the State,” which may constitute reasons for suspension include, but are not limited to: budgetary constraints, a declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety (90) days, or any longer period agreed to by the Contractor, the Division shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or, (2) terminate the Agreement. Suspension of work shall not entitle the Contractor to any additional compensation.
- B. **TERMINATION FOR CONVENIENCE.** This Agreement may be terminated by the Division in whole or in part at any time if the best interest of the Division. The Contractor shall not furnish any product after it receives the notice of termination (whether for convenience or for cause), except as necessary to complete the continued portion of the Contract, if any. If this Agreement is terminated before performance is completed, then the Contractor shall 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 agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. If this agreement is terminated, all work in progress shall become the property of the Division and shall be turned over promptly by the Contractor. The Contractor shall not be entitled to recover any cancellation charges or lost profits.
- C. **TERMINATION FOR CAUSE.** The Division may terminate the Agreement if the Contractor fails to: (1) deliver the product within the time specified in the Agreement or any extension; (2) maintain adequate progress, thus endangering performance of the Agreement; (3) honor any term of the Agreement; (4) timely cure a default; or, (5) abide by any statutory, regulatory, or licensing requirement (Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default). The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Agreement arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Division. The rights and

remedies of the Division in this clause are in addition to any other rights and remedies provided by law or under the Contract.

11. REMEDIES

- A. Any dispute concerning performance of this Agreement shall be decided by the Division's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty-one (21) days from the date of receipt, the Contractor files with the Division a petition for an administrative hearing. The Division's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120, Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.
- B. In the event the Contractor fails to satisfactorily perform, or has failed to adhere to the terms and conditions under this Agreement, the Division shall, upon fifteen (15) calendar days written notice to the Contractor, and upon the Contractor's failure to cure within those fifteen (15) calendar days, exercise any one or more of the following remedies, either concurrently or consecutively:
- 1) Withhold or suspend payment of all or any part of a request for payment.
 - 2) Require that the Contractor refund to the Division any monies used for ineligible purposes under the laws, rules, and regulations governing the use of these funds.
 - 3) Exercise any corrective or remedial actions, including but not limited to:
 - a) Requesting additional information from the Contractor to determine the reasons for, or the extent of, non-compliance or lack of performance;
 - b) Issuing a written warning to advise that more serious measures may be taken if the situation is not corrected;
 - c) Advising the Contractor to suspend, discontinue, or refrain from incurring costs for any activities in question; or,
 - d) Requiring the Contractor to reimburse the Division for the amount of costs incurred for any items determined to be ineligible.
- C. Pursuing any of the above remedies will not keep the Division from pursuing any other rights or remedies which may be otherwise available under law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Contractor, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Contractor.

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

12. LIQUIDATED DAMAGES

- This provision applies.
- This provision does not apply.

A. The Contractor shall be responsible for any and all consequential damages resulting from the breach of this Agreement, and if consequential damages are not calculable, then this Liquidated Damages provision shall apply.

B. NOTICE OF DEFAULT. The Contractor will promptly notify the Division upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion (or delivery) of any Service, Deliverable, or Project; or if the Contractor uses or authorizes a third party to use Division Materials beyond the license for use. The Contractor will use commercially reasonable efforts to avoid or minimize any delays in performance, and will inform the Division 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 Division has caused, or will cause, the Contractor to be unable to perform its obligations on time, the Contractor will promptly notify the Division and use commercially reasonable efforts to perform its obligations on time notwithstanding the Division's delay. Provided that the Contractor satisfies the requirements of the immediately foregoing sentence, the Contractor will not be liable for liquidated damages if and only to the extent that the Contractor's applicable failure to perform or delay in performing is caused by the Division.

C. AMOUNT OF LIQUIDATED DAMAGES. Applicable liquidated damages are the amounts established in the following schedule:

Original Contract Amount	Daily Charge Per Calendar Day
\$50,000 and under.....	\$956
\$50,000.01 to \$249,999.99.....	\$964
\$250,000 to \$499,999.99.....	\$1,241
\$500,000 to \$2,499,999.99.....	\$1,665
\$2,500,000 to \$4,999,999.99.....	\$2,712
\$5,000,000 to \$9,999,999.99.....	\$3,447
\$10,000,000 to 14,999,999.99.....	\$4,866
\$15,000,000 to \$19,999,999.99.....	\$5,818
\$20,000,000 and over.....	\$9,198 plus 0.00005 of any amount over \$20 million (round to nearest whole dollar)

- D. DETERMINATION OF NUMBER OF DAYS OF DEFAULT. For all contracts, regardless of whether the Contract Time is stipulated in calendar days or working days, the Contractor will count default days in calendar days.
- E. CONDITIONS UNDER WHICH LIQUIDATED DAMAGES ARE IMPOSED. If the Contractor, in the case of default, fails to complete the work within the time stipulated in the Contract, or within such extra time that the Division may have granted the Contractor, then the surety shall pay to the Division, not as a penalty, but as liquidated damages, the amount so due as provided in the schedule above.
- F. RIGHT OF COLLECTION. The Division has the right to apply as payment on such liquidated damages, any money the Division owes the Contractor.
- G. ALLOWING CONTRACTOR TO FINISH WORK. The Division does not waive its right to liquidated damages due under the Contract by allowing the Contractor to continue and to finish the work or any part of it after the expiration of the contract time.
- H. COMPLETION OF WORK BY THE DIVISION. In the case of a default of the Contract and the completion of the work by the Division, the Contractor and his surety are liable for the liquidated damages under the Contract, but the Division will not charge liquidated damages for any delay in the final completion of the Division's performance of the work due to any unreasonable action or delay on the part of the Division.

13. EMPLOYEES, ASSIGNMENT, AND SUBCONTRACTS

- A. INDEPENDENT CONTRACTOR. The Contractor and its employees, agents, representatives, assignees, and subcontractors are not employees or agents of the Division and are not entitled to the benefits of State of Florida employees. The Division shall not be bound by any acts or conduct of the Contractor or its employees, agents, representatives, assignees, or subcontractors. The Contractor agrees to include this provision in all of its subcontracts under this Agreement.
- B. ALL EMPLOYEES, SUBCONTRACTORS, AND AGENTS. All Contractor employees, assignees, subcontractors, or agents performing work under this Agreement shall be properly trained technicians who meet or exceed any specified training qualifications and shall have all current licenses and permits required for all of the particular work for which they are hired by the Contractor. Upon request, the Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, assignees, subcontractors, or agents performing work under this Agreement must comply with all security and administrative requirements of the Division and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, assignee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with the Division's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with

the Agreement. The State may reject and bar from any facility for cause any of the Contractor's employees, assignees, subcontractors, or agents. The Division and the State shall take all actions necessary to ensure that the Contractor's employees, assignees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to, ensuring that Contractor's employees, assignees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.

- C. CONVICTED AND DISCRIMINATORY VENDORS. In accordance with sections 287.133 and 287.134, Florida Statutes, an entity or affiliate who is on the Convicted Vendor List or the Discriminatory Vendor List may not perform work as a contractor, supplier, sub-contractor, or consultant under this Agreement.
- D. WARRANTY TO PERFORM. The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it, nor any affiliate, is currently on the convicted or discriminatory vendor lists, or on any similar list maintained by any other state or the federal government.
- E. ASSIGNMENT. The Contractor shall not sell, assign, or transfer any of its rights, duties or obligations under this Agreement without the prior written consent of the Division. In the event of any assignment, the Contractor remains secondarily liable for performance of this Agreement, unless the Division expressly waives such secondary liability. The Division may assign this Agreement with prior written notice to Contractor.
- F. SUBCONTRACTS. The Vendor may subcontract any work under this Purchase Order. Subcontractors must be approved in writing. The Vendor is fully responsible for satisfactory completion of all subcontracted work.

14. MODIFICATION OF CONTRACT

This Agreement contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Division and the Contractor. This Agreement may only be modified or amended upon mutual written agreement of the Division and the Contractor. No oral agreements or representations shall be valid or binding upon the Division or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Division. The Contractor may not unilaterally modify the terms of this Agreement by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. The Division's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

15. MONITORING

The Contractor agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Division or its agents, employees, or designee, including the Florida Chief Financial Officer, or Florida Auditor General. In the event that the Division determines that a limited scope audit of the Contractor is appropriate, the Contractor agrees to comply with any additional instruction provided by the Division to the Contractor regarding such audit. The Contractor further agrees to comply and cooperate with any inspection reviews, investigations, or audits deemed necessary by the Florida Chief Financial Officer or Florida Auditor General.

Records of costs incurred by the Contractor under the terms of this Agreement shall be maintained by the Contractor and made available upon request to the Division at all times during the period of this Agreement. Copies of these documents and records shall be furnished to the Division upon request. Records of costs incurred shall include the Contractor's general accounting records and the project records, together with supporting documents and records of the Contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Division for a proper audit of project costs.

16. NOTICE AND CONTACT

A. Pursuant to section 287.057(14), Florida Statutes, the Division's Contract Manager shall be responsible for enforcing performance of the contract terms and conditions and the Division's Contract Manager shall serve as liaison with the Contractor. Additionally, the Contract Manager for the Division shall (1) monitor and document Contractor performance; and, (2) review and document all deliverables for which the Contractor requests payment.

B. The Division's Contract Manager is [REDACTED].

C. In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title, and address of the new representative will be provided to the other party in writing via letter or electronic email.

D. All notices required under the Agreement shall be delivered to the following:

For DIVISION (Contract Manager)	For CONTRACTOR
2555 Shumard Oak Boulevard	
Tallahassee, Florida 32399	
Tel:	Tel:
Email:	Email:

17. MISCELLANEOUS

- A. All services shall be performed by the Contractor to the satisfaction of the Division who shall decide all questions, difficulties and disputes of any nature that may arise under this Agreement, the performance and fulfillment of the services under it and the character, quality, and value thereof; and the decision upon all claims, questions and disputes shall be final and binding upon all parties hereto. Adjustments of compensation and contract time because of any major changes in the work that may become necessary or desirable as the work progresses shall be subject to mutual agreement of the parties, and Amendments(s) shall be entered into by the parties in accordance with the changes.
- B. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Division at all times during the period of this Agreement and for five (5) years after completion of the work pursuant to this Agreement. Copies of these documents and records shall be furnished to the Division, its agents, employees or designee, including agents of other State agencies or the Federal government upon request. Records of costs incurred shall include the Contractor's general accounting records and the project records, together with supporting documents and records, of the Contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Division for a proper audit of project costs.
- C. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.
- D. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
- E. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.
- F. Should a court determine any provision of this Agreement is invalid, the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the provision held to be invalid.
- G. If this Agreement is the result of a formal solicitation (Invitation to Bid, Request for Proposal or Invitation to Negotiate), the Department of Management Services Form(s) PUR 1000 and PUR 1001, included in the solicitation, are incorporated herein by reference and made part of the Agreement unless modified. If this Agreement is not the result of a formal solicitation, the Contractor is subject to the terms and conditions as outlined in Form PUR 1000 which, unless modified, are incorporated by reference and made part of this Agreement. Additional Contract Terms and Conditions ("Special Conditions") Modifying Florida PUR 1000 General Contract Conditions may also apply.

- H. The Division may require the Contractor and its employees, agents, representatives and subcontractors to provide fingerprints and be subject to such background screen as determined by the Agency and conducted by the Florida Department of Law Enforcement or the Federal Bureau of Investigation. The cost of the background screen(s) shall be borne by the Contractor. The Division may require the Contractor to exclude the Contractor's employees, agents, representatives, or subcontractors based on the background screening results.
- I. The delay or failure by the Division to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Division's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- J. Pursuant to their own governing laws, and subject to the agreement of the Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-Division purchases are independent of the agreement between Division and the Contractor, and the Division shall not be a party to any transaction between the Contractor and any other purchaser.

As provided in section 287.042(16)(a), Florida Statutes, other state agencies may purchase from the resulting contract, provided that the Department of Management Services has determined that the contract's use is cost-effective and in the best interest of the State. Upon such approval, the Contractor may, at its discretion, sell these commodities or services to additional agencies, upon the terms and conditions contained herein.

- K. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- L. The Division may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of this Agreement. The Division may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Division may solicit separate bids to satisfy them.
- M. Notice of Delay, and No Damages for Delay. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Division in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be

asserted against the Division. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Division 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 Division determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Division, in which case the Division may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Division with respect to products subjected to allocation; or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity; or (3) terminate the Contract in whole or in part.

18. CONTRACT TERMS REQUIRED BY FEDERAL LAW.

Any contract or subcontract funded by this Agreement must contain the applicable provisions described in Appendix II to 2 C.F.R. Part 200. It is the responsibility of the Contractor to include any of the required provisions in its sub-contracts.

A. Equal Employment Opportunity. During the performance of this contract, the Contractor agrees as follows:

1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information

of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- 4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such

direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

B. Davis-Bacon Act, if applicable.

- 1) All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- 2) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- 3) Additionally, contractors are required to pay wages not less than once a week.

C. Copeland "Anti-Kickback" Act, if applicable.

- 1) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- 2) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- 3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

D. Contract Work Hours and Safety Standards. In accordance with 40 U.S.C. 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

E. Clean Air Act and the Federal Water Pollution Control Act. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as

amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

F. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

G. Debarment and Suspension.

1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

2) The Contractor and any subcontractors must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3) This certification is a material representation of fact relied upon by the Division. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Division, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

H. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans, and Cooperative Agreements for an award
of \$100,000 or more.

The Contractor certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, by executing this Agreement, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

- I. 2 C.F.R. § 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. Contractor shall comply with the requirements of 2 C.F.R. § 200.321.
- J. Additional federal provisions in Appendix II to 2 C.F.R. Part 200, effective 11/12/2020, which may apply. It is the responsibility of the Contractor to comply with or include in its subcontracts any of the following provisions:

- 1) 2 C.F.R. § 200.216 Prohibition on certain telecommunication and video surveillance services or equipment.
- 2) 2 C.F.R. § 200.322 Domestic preferences for procurements.
- 3) 2 C.F.R. § 200.323 Procurement of recovered materials.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers on the day, month and year set forth above.

CONTRACTOR

DIVISION OF EMERGENCY MANAGEMENT

By: _____
(Authorized Signature) (Date)

By: _____
(Authorized Signature) (Date)

(Print/Type Name)

(Print/Type Name)

Title: _____

Title: _____

Federal Tax ID# _____

Additional Contract Terms and Conditions (“Special Conditions”) Modifying Florida PUR 1000 General Contract Conditions

Pursuant to Rule 60A-1.002(7)(b), Florida Administrative Code, “The agency shall attach additional contract terms and conditions specific to each particular solicitation. These additional terms are commonly referred to as ‘Special Conditions.’ In the event of any conflict between the PUR 1000 form and any Special Conditions attached by the agency, the Special Conditions shall take precedence over the PUR 1000 form unless the conflicting term in the PUR form is required by any section of the Florida Statutes, in which case the term contained in PUR 1000 shall take precedence.”

The following provisions of PUR 1000 shall not apply:

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