

**State Purchasing Agreement
(PUR 7722)**

1. PURPOSE & SCOPE: Under authority of Section 287.042(1)(a) and (2)(a), F.S., the purpose of this State Purchasing Agreement (the "Agreement") is to establish terms and conditions for the sale and purchase of commodities or services between you ("You," or "Vendor") and the State of Florida, Department of Management Services ("Department"). This Agreement does not establish the Vendor as the exclusive source of the items under contract, and other Vendors may offer and sell similar products or services without establishing a State Purchasing Agreement. State agencies are not required to use this Agreement. This Agreement does not exempt eligible users from the competitive solicitation requirements described in Chapter 287, Florida Statutes.

2. TERM/TERMINATION: This Agreement has a term of one (1) year from the Effective Date, as noted on Exhibit A. This Agreement may be cancelled in whole or in part by either party at any time by written notice to the other party. The effective date of the cancellation will be as stated in the notice or on the date of receipt if the notice does not specify a date certain. Vendor's failure to perform in any aspect of this Agreement may result in immediate termination of this Agreement, in addition to those remedies laid out in the relevant sections of the Florida Administrative Code.

3. ELIGIBLE USERS: Eligible Users participating in the Agreement do so according to the following terms: (1) non-State Eligible Users assume and bear complete responsibility with regard to performance of any contractual obligation or term; (2) breach of an Agreement term by any particular Eligible User shall not be deemed a breach of the Agreement as a whole, which shall remain in full force and effect, and shall not affect the validity of the Agreement nor the Vendor's obligations to non-breaching Eligible Users or the Department; (3) the State shall not be liable for any breach by a non-State Eligible User; (4) each non-State Eligible User and the Vendor guarantee to save the State and its officers, agents, and employees harmless from liability that may be or is imposed by their failure to perform in accordance with their obligations under the Agreement.

4. ORDERING LIMITS: Agency purchasing offices shall not make purchases exceeding Category Two from this Agreement. Purchases exceeding Category Two shall be made in accordance with s.287.057, F.S. A purchasing office shall not divide its purchases with the purpose of circumventing this requirement. When determining the purchase amount for the purpose of applying the Category Two threshold, agency purchasing offices shall review and consider concurrent and planned or projected requirements on an agency-wide basis for the remaining term of the Agreement at the time of order, except that purchases by agencies with multiple purchasing offices shall be considered and reviewed on the basis of the portion of the agency served by the purchasing office issuing the purchase order.

This requirement does not preclude utilization of the Agreement to fulfill subsequent unplanned or unforeseen orders at or below Category Two, which would cause total orders under the agreement to exceed the Category Two threshold.

5. PRODUCTS AND PRICING: The products/services offered by the Vendor and the pricing of such products/services under this Agreement are shown on Exhibit A, attached, which is hereby incorporated by reference. The Vendor is urged to offer additional discounts for one time delivery of large single orders. Eligible Users

should seek to negotiate additional price concessions on quantity purchases of any products offered under the Agreement.

6. INVOICING AND PAYMENT:

(a) Taxes: The State of Florida does not pay Federal Excise and Sales taxes on direct purchases of tangible personal property. This exemption does not apply to purchases of tangible personal property in the performance of agreements for the improvement of state-owned real property as defined in Chapter 192, Florida Statutes.

(b) Invoicing and Payment: Invoices must be submitted in accordance with the Eligible User's specific instructions. Invoicing Eligible Users at prices higher than those maintained in the agreement may result in immediate termination of this agreement. The Vendor shall be paid upon submission of properly certified invoices to the Eligible Users, after delivery, inspection and acceptance of goods. Payment shall be made in accordance with Section 215.422, Florida Statutes, which states the Vendor's rights and the State agency's responsibilities concerning interest penalties and time limits for payment of invoices. Travel expenses, if applicable, will be paid pursuant to the provisions of Section 112.061, Florida Statutes.

(c) Vendor Ombudsman: A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Vendors who may be experiencing problems in obtaining timely payment(s) from a State agency. The Vendor Ombudsman may be contacted at (850) 488-2924 or by calling the State Comptroller's Hotline, 1-800-848-3792.

(d) Annual Appropriations: The State of Florida's performance and obligation to pay under this agreement is contingent upon an annual appropriation by the Legislature.

7. TRANSACTION FEE: This Agreement has been secured using MyFloridaMarketPlace, a statewide eProcurement system (the "System"). Pursuant to s. 287.057(23), F.S., all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Vendor shall pay to the State.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Vendor. If automatic deduction is not possible, the Vendor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Vendor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

Vendor shall receive a credit for any Transaction Fee paid by the Vendor for the purchase of any item(s) if such item(s) are returned to the Vendor through no fault, act, or omission of the Vendor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the Vendor in default and recovering procurement costs from the Vendor in addition to all outstanding fees. VENDORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.

8. INSPECTION AND ACCEPTANCE:

(a) Inspection and acceptance of commodities:

(1) For Vendor-installed products, the date of acceptance is the date the Eligible User accepts the product as installed and in good working order, as determined by any appropriate acceptance testing, and the Eligible User shall certify in writing to the Vendor when the product is accepted (if training or other post-installation services are included in the purchase order, the acceptance shall be conditional).

(2) For buyer-installed products, the date of acceptance shall be the delivery date. Until acceptance, risk of loss or damage shall remain with the Vendor. The Vendor shall be responsible for filing, processing, and collecting all damage claims. To assist the Vendor with damage claims, the Eligible User shall: (i) record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; (ii) report damage to the carrier and the Vendor; and (iii) provide the Vendor with a copy of the carrier's Bill of Lading and damage inspection report.

(3) When an Eligible User rejects a product, Vendor shall remove it from the premises within ten days after notification of rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Vendor. Rejected product not removed by the Vendor within ten days shall be deemed abandoned by the Vendor, and the Eligible User shall have the right to dispose of it as its own property. The Vendor shall reimburse the Eligible User for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

(b) Inspection and acceptance of services: Each phase of the services, including quality of work, rendered under this agreement is subject to the Eligible User's inspection during both the Vendor's operations and after completion of the tasks. When the Vendor is satisfied with the completion of the contracted work, and prior to acceptance of any phase of work, Vendor shall submit a written request for an inspection to the Eligible User's Project Manager. After inspection, the Eligible User's Project Manager will issue a punch list of deficiencies, if any. Upon completion of the punch list, and correction of all deficiencies by the Vendor, the Vendor Project Manager shall notify the Eligible User's Project Manager that the work has been completed satisfactorily. Final inspection shall be performed prior to contract expiration date.

9. WARRANTY: Vendor shall provide to the Eligible User a one year written warranty:

- (a) against poor workmanship, for all services rendered by the Vendor,
- (b) for all products, materials or equipment provided by the Vendor in the course of providing service to the Eligible User, and
- (c) for all commodities sold to the Eligible User.

The warranty period shall begin on the date of final completion and/or acceptance by Eligible User. If the Vendor is a manufacturer or reseller of computer software and offers separate maintenance/upgrade services on Exhibit A, Vendor must provide at least a 30-day written warranty for such software, instead of the one (1) year warranty described above.

10. INDEMNITY AND LIMITATION OF LIABILITY:

(a) General obligation of indemnity: The Vendor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the Eligible User(s) and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including

attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Vendor, its agents, employees, partners, or subcontractors; provided, however, that the Vendor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the Eligible User(s).

(b) Additional obligation regarding intellectual property indemnification: The Vendor shall fully indemnify, defend, and hold harmless the Eligible User(s) 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 that the Eligible User(s) shall give the Vendor: (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Vendor's sole expense, and (3) assistance in defending the action at Vendor's sole expense. The Vendor shall not be liable for any cost, expense, or compromise incurred or made by the Eligible User(s) in an infringement action without the Vendor's prior written consent, which shall not be unreasonably withheld. If any item sold hereunder is the subject of an infringement suit, or in the Vendor's opinion is likely to become the subject of such a suit, the Vendor may at its sole expense procure for the Eligible User the right to continue using the item or to modify it to become non-infringing. If the Vendor is not reasonably able to modify or otherwise secure the Eligible User the right to continue using the item, the Vendor shall remove the item and refund the Eligible User the amounts paid in excess of a reasonable rental for past use. The Eligible User shall not be liable for any royalties.

(c) Remaining claims: Except as specified in the foregoing portions of this section, for all other claims against the Vendor under any individual purchase order, and regardless of the basis on which the claim is made, the Vendor's liability under a purchase order for direct damages shall be the greater of \$25,000 or the dollar amount of the purchase order. Unless otherwise specifically enumerated in the purchase order, no party shall be liable to another for special, indirect, or consequential damages, including lost data or records (unless the purchase order requires the Vendor 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.

11. ASSIGNMENT: Neither orders issued pursuant to this Agreement nor payments due hereunder are assignable except with the prior written approval of the relevant Eligible User. Despite this general prohibition, in the event that Vendor successfully assigns its right to payment, Vendor shall return to the Eligible User any monies received by it from the Eligible User after the effective date of such assignment.

12. COMPLIANCE WITH LAWS: The Vendor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, Chapter 287 of the Florida Statutes and Chapter 60A-1 of the Florida Administrative Code govern this agreement. By way of further non-exhaustive example, the Vendor shall comply with section 247A(e) of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of such laws shall be grounds for termination.

13. WARRANTY OF ABILITY TO PERFORM: The Vendor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Vendor shall immediately notify the Department in writing if its ability to perform is compromised in any manner during the term of the Agreement.

14. ADVERTISING: The Vendor shall not publicly disseminate any information concerning the Agreement without prior written approval from the Department, including but not limited to, mentioning the Agreement in a press release or other promotional material, identifying the Department or the State as a reference, or otherwise linking the Vendor's name and either a description of the Agreement or the name of the State, the Department, or any Eligible User in any material published, either in print or electronically, to any entity that is not a party to Agreement, except potential or actual authorized distributors, dealers, resellers, or service representative.

15. DISPUTE RESOLUTION: Any dispute concerning performance of the Agreement shall be decided by the State Purchasing Director or his/her designee, who shall reduce the decision to writing and serve a copy on the Vendor and, if appropriate, the Eligible User. The decision of Director (or designee) shall be final and conclusive unless within ten (10) days from the date of receipt, the Vendor files with the Department a petition for administrative hearing. The Department's decision on the petition shall be final, subject to the Vendor's right to review pursuant to Chapter 120 of the Florida Statutes. Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Agreement shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply, and the Vendor waives any right to jury trial that it may have.

16. MISCELLANEOUS PROVISIONS:

(a) Lobbying and Integrity: Vendor shall comply with the provisions of s. 11.062 and s. 216.347, F.S., prohibiting use of contract funds to lobby the Legislature, Judiciary, or state agencies.

Upon request of the Department's Inspector General, or other authorized State official, the Vendor shall provide any type of information the Inspector General deems relevant to the Vendor's integrity or responsibility. Such information may include, but shall not be limited to, the Vendor's business or financial records, documents, or files of any type or form that refer to or relate to the Agreement. The Vendor shall retain such records for the longer of (1) three years after the expiration of the Agreement or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dlis.dos.state.fl.us/barm/genschedules/gensched.htm>). The Vendor 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 Vendor's compliance with the terms of this or any other agreement between the Vendor and the State which results in the suspension or debarment of the Vendor. 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 Vendor shall not be responsible for any costs of investigations that do not result in the Vendor's suspension or debarment.

(b) Independent Contractor Status of Vendor: The Vendor, together with its agents, distributors, resellers, subcontractors, officers and employees, shall have and always retain under the Agreement the legal status of an independent contractor,

and in no manner shall they be deemed employees of the State or Eligible User or deemed to be entitled to any benefits associated with such employment. During the term of the Agreement, Vendor shall maintain at its sole expense those benefits to which its employees would otherwise be entitled to by law, including health benefits, and all necessary insurance for its employees, including workers' compensation, disability, and unemployment insurance, and provide Eligible Users with certification of such insurance upon request. The Vendor remains responsible for all applicable federal, state, and local taxes, and all FICA contributions.

(c) Assignment: The Vendor shall not sell, assign or transfer any of its rights, duties or obligations under the Agreement, or under any purchase order issued pursuant to the Agreement, without the prior written consent of the Department; provided, the Vendor assigns to the State any and all claims it has with respect to the Agreement under the antitrust laws of the United States and the State. The Department may assign the Agreement with prior written notice to Vendor of its intent to do so.

(d) Modification of Terms: The Agreement contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions by Eligible Users under the Agreement. No oral agreements or representations shall be valid or binding upon the Department, an Eligible User, or the Vendor. No alteration or modification of the Agreement terms, including substitution of product, shall be valid or binding against the Eligible User unless authorized by the Department. The Vendor may not unilaterally modify the terms of the 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 Vendor's order or fiscal forms or other documents forwarded by the Vendor for payment. An Eligible User's acceptance of product or processing of documentation on forms furnished by the Vendor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

(e) Waiver: The delay or failure by the Department or an Eligible User to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of the Department's or Eligible User'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.

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