

**Purchase Order  
Terms & Conditions  
Effective May, 30, 2015**

**Section 1. Introduction.**

**A. Composition of Agreement and Priority.**

The Agency contracts with Vendor to furnish, within the manner and at the location specified, certain services, information and items as specified in the completed Purchase Order, and attachments which are integral parts of this Purchase Order. The Purchase Order Terms and Conditions, whether generic or specific, shall take precedence over and supersede any inconsistent or conflicting provision in the State of Florida, General Contract Conditions, PUR1000. Additionally, the terms of this Purchase Order supersede the terms of any and all prior agreements with respect to this purchase.

**B. Initial Term.**

Unless otherwise specified, this Purchase Order begins on the date of issuance. Services to be rendered by the Vendor shall be completed by the date specified on the Purchase Order End Date.

**Section 2. Performance.**

**A. Performance Standards.**

The Vendor agrees to perform all tasks and provide deliverables as set forth in the Statement of Work and contractual documents attached to the Purchase Order. The Agency shall be entitled at all times to be advised, at its request, as to the status of work being done by the Vendor and of the details thereof. Coordination shall be maintained by the Vendor with representatives of the Agency, or of other agencies interested in the project on behalf of the Agency.

**B. Performance Deficiency.**

If the Agency determines that the performance of the Vendor is unsatisfactory, the Agency will notify the Vendor of the deficiency to be corrected, which correction shall be made within a time-frame specified by the Agency. The Vendor shall, within the time specified in the contractual documents after notice from the Agency, provide the Agency with a corrective action plan describing how the Vendor will address all issues of contract 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 Agency, the Vendor may 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 Vendor resolves the deficiency. If the deficiency is subsequently resolved, the Vendor may bill the Agency for the retained amount during the next billing period. If the Vendor is unable to resolve the deficiency, the funds retained may be forfeited at the end of the agreement period.

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**Section 3. Payment and Fees.**

**A. Payment Invoicing.**

The Vendor will be paid upon submission of properly certified invoice(s) to the Agency after delivery and acceptance of commodities or services is confirmed in writing by the Agency. Invoices shall contain detail sufficient for a proper pre-audit and post audit thereof and shall contain the Purchase Order and the Vendor's Federal Employer Identification Number or Social Security Number.

**B. Payment Timeframe.**

Section 215.422, F.S., provides that agencies have 5 (five) working days to inspect and approve commodities and services. Items may be tested for compliance with specifications. Items delivered not conforming to specifications may be rejected and returned at Vendor's expense. Any increase in cost will be charged against the Vendor. Interest penalties for late payment are also provided for in Section 215.422, F.S. 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.

**C. MyFloridaMarketPlace Fees.**

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to Section 287.057, F.S., all payments shall be assessed a transaction fee of one percent (1%), 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, Florida Administrative Code. 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. The 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 Purchasing Order. Failure to comply with these requirements shall constitute grounds for declaring the Vendor in default and recovering re-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.

**D. Payment Audit.**

Records of costs incurred under terms of this Purchase Order shall be maintained and made available upon request to the Agency at all times during the period of this Purchase Order. Copies of these documents and records shall be furnished to the Agency upon request. Records of costs incurred shall include the Vendor's general accounting records and the project records, together with supporting documents and

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records of the Vendor and all subcontractors performing work on the project, and all other records of the Vendor and subcontractors considered necessary by the Agency for a proper audit of project costs.

**E. Annual Appropriation.**

Pursuant to section 287.0582, F.S., if this purchase order binds the State or an executive agency for the purchase of services or tangible personal property for a period in excess of one (1) fiscal year, the State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature. Travel expenses are not reimbursable unless specifically authorized in writing, and shall be reimbursed only in accordance with section 112.061, F.S.

**Section 4. Liability.**

**A. Indemnity.**

To the extent permitted by Florida law, Vendor agrees to indemnify, defend, and hold the State of Florida, its officers, employees and agents harmless from all fines, claims, assessments, suits, judgments, or damages, consequential or otherwise, including court costs and attorney's fees, arising out of any acts, actions, breaches, neglect or omissions of Vendor, its employees, agents, subcontractors, assignees or delegates related to this Purchase Order, as well as for any determination arising out of or related to this Purchase Order, that Vendor or Vendor's employees, agents, subcontractors, assignees or delegates are not independent contractors in relation to the Agency. This Purchase Order does not constitute a waiver of sovereign immunity or consent by the Agency or the State of Florida or its subdivisions to suit by third parties.

**B. Payment for Claims.**

The Vendor guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Vendor or any subcontractor, assignee or delegate in connection with the Purchase Order.

**C. Liability Insurance.**

The Vendor shall maintain insurance sufficient to adequately protect the Agency from any and all liability and property damage/hazards which may result from the performance of this Purchase Order. All insurance shall be with insurers qualified and duly licensed to transact business in the State of Florida. If required by the Agency and prior to commencing any work Vendor shall provide a Certification(s) of Insurance evidencing that all appropriate coverage is in full force and showing the Agency to be an additional insured.

**D. Workers' Compensation.**

The Vendor shall maintain Workers' Compensation insurance as required under the Florida Workers' Compensation Law.

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**E. Performance Bond.**

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

**Section 5. Compliance with Laws.**

**A. Conduct of Business.**

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. For example, the Vendor 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), F.S., the provisions of Section 287.058(1)(a)-(c), and (i), F.S., are hereby incorporated by reference, to the extent applicable.

**B. Lobbying.**

Pursuant to Sections 11.062 and 216.347, F.S., the Vendor may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or an Agency.

**C. Gratuities**

Vendor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Inspector General or any 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 Purchase Order. The Vendor shall retain such records for the longer of (1) three years after the expiration of the Purchase Order or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>). The 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

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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.

**D. Public Records.**

To the extent required by the Florida Public Records Act, Chapter 119, F.S., Vendor shall maintain and allow access to public records made or received in conjunction with this Purchase Order. This Purchase Order may be unilaterally cancelled by the Agency for Vendor's refusal to allow access to public records.

**E. Communications and Confidentiality.**

The Vendor agrees that it shall make no statements, press releases, or publicity releases concerning this Purchase Order 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 Purchase Order, or any particulars thereof, during the period of the Purchase Order, without first notifying the Agency's Contract Manager or the Agency's designated contact person and securing prior written consent. Vendor shall maintain confidentiality of all confidential data, files, and records related to the services and/or commodities provided pursuant to this Purchase Order and shall comply with all state and federal laws, including, but not limited to Sections 381.004, 384.29, 392.65, and 456.057, F.S. Vendor's confidentiality procedures shall be consistent with the most recent version of the Agency's security policies, protocols, and procedures. The Vendor shall also comply with any applicable professional standards with respect to confidentiality of information.

**F. Intellectual Property.**

Unless specifically addressed in the Purchase Order, intellectual property rights to all property created or otherwise developed by Vendor for the Agency will be owned by the State of Florida through the Agency at the completion of the Purchase Order. Proceeds to any Agency derived from the sale, licensing, marketing or other authorization related to any such Agency-controlled intellectual property right shall be handled in the manner specified by applicable state statute.

**G. Convicted Vendors.**

In accordance with Sections 287.133 and 287.134, F.S., 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 a Purchase Order with any Agency.

**H. Competitive Advantage.**

Section 287.057, Florida Statutes, provides, "A person who receives a contract that has not been procured pursuant to subsections (1)-(3) to perform a feasibility study of the potential implementation of a subsequent contract, who participates in the drafting of a solicitation or who develops a program for future implementation, is not eligible to contract with the Agency for any other contracts dealing with that specific subject matter,

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and any firm in which such person has any interest is not eligible to receive such contract. However, this prohibition does not prevent a Vendor who responds to a request for information from being eligible to contract with an Agency.”

The Agency considers participation through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, or auditing or any other advisory capacity to constitute participation in the drafting of a competitive solicitation.

**Section 6. Termination.**

**A. Termination for Convenience.**

This Purchase Order may be terminated by the Agency in whole or in part at any time in the best interest of the Agency. If the Purchase Order is terminated before performance is completed, the Vendor 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 Purchase Order. All work in progress shall become the property of the Agency and shall be turned over promptly by the Vendor.

**B. Termination for Cause.**

If the Agency determines that the performance of the Vendor is not satisfactory, the Agency shall have the option of (a) immediately terminating the Purchase Order, or (b) notifying the Vendor of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Purchase Order will be terminated at the end of such time, or (c) take other action deemed appropriate by the Agency.

**Section 7. Subcontractors and Assignments.**

**A. Subcontractors.**

The Vendor shall not subcontract any work under this Purchase Order without the prior written consent of the Agency. The Vendor is fully responsible for satisfactory completion of all subcontracted work.

**B. Assignment.**

The Vendor shall not sell, assign or transfer any of its rights, duties or obligations under the Purchase Order without the prior written consent of the Agency. In the event of any assignment, the Vendor remains secondarily liable for performance of the Purchase Order, unless the Agency expressly waives such secondary liability. The Agency may assign the Purchase Order with prior written notice to Vendor.

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**Section 7. RESPECT and PRIDE.**

**C. RESPECT.**

In accordance with Section 413.036(3), F.S., if a product or service required for the performance of this Purchase Order is on the procurement list established pursuant to subsection 413.035(2), F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES THAT ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM A NONPROFIT AGENCY FOR THE BLIND OR FOR THE SEVERELY HANDICAPPED THAT IS QUALIFIED PURSUANT TO CHAPTER 413, FLORIDA STATUTES, IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 413.036(1) AND (2), FLORIDA STATUTES; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THE STATE AGENCY INsofar AS DEALINGS WITH SUCH QUALIFIED NONPROFIT AGENCY ARE CONCERNED.

Additional information about the designated nonprofit Agency and the products it offers is available at <http://www.respectofflorida.org>.

**D. PRIDE.**

In accordance with Section 946.515(6), F.S., if a product or service required for the performance of this Purchase Order is certified by or is available from Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) and has been approved in accordance with Section 946.515(2), F.S., the following statement applies:

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

Additional information about PRIDE and the products it offers is available at <http://www.pride-enterprises.org>.

**Section 8. Miscellaneous.**

**A. Independent Contractor.**

The Vendor and its employees, agents, representatives, and subcontractors are not employees or agents of the Agency and are not entitled to the benefits of State of Florida employees. The Agency shall not be bound by any acts or conduct of the Vendor or its employees, agents, representatives, or subcontractors. Vendor agrees to include this provision in all of its subcontracts under this Purchase Order.

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**B. Governing Law and Venue.**

The laws of the State of Florida shall govern this Purchase Order. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to this Purchase Order. Further, the Vendor hereby waives any and all privileges and rights relating to venue it may have under Chapter 47, F.S., 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. Vendor hereby submits to venue in the county chosen by the Agency.

**C. Waiver.**

The delay or failure by the Agency to exercise or enforce any of its rights under this Purchase Order shall not constitute waiver of such rights.

**D. Modification and Severability.**

The Purchase Order may only be modified by a change order agreed to by the Agency and the Vendor. Should a court determine any provision of this Purchase Order is invalid, the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Purchase Order did not contain the provision held to be invalid.

**E. Time is of the Essence.**

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

**F. Background Check.**

The Agency may require the Vendor 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 Vendor. The Agency may require the Vendor to exclude the Vendor's employees, agents, representatives or subcontractors based on the background screening results.

**G. E-Verify.**

In accordance with Executive Order 11-116, the Vendor agrees to utilize the U.S. Agency 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 the Purchase Order for the services specified in the Purchase Order. Vendor 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 Purchase Order term.



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**H. Commodities Logistics.**

The following provisions shall apply to all Purchase Orders unless otherwise indicated in the contract documents:

- 1) All purchases are F.O.B. destination, transportation charges prepaid.
- 2) Each shipment must be shipped to the address indicated on the face of this Purchase Order and marked to the attention of the individual identified, if any. Each shipment must be labeled plainly with the Purchase Order number and must show the gross, tare, and net weight. A complete packing list must accompany each shipment. This paragraph shall also apply to any third party who ships items against this Purchase Order on behalf of the Vendor.
- 3) No extra charges shall be applied for boxing, crating, packing, or insurance.
- 4) The following delivery schedule shall apply: 8:00 AM – 4:00 PM, Monday through Friday, excluding legal holidays.
- 5) If delivery to the specified destination cannot be made on or before the specified date, notify the Agency immediately using the contact information provided in the MyFloridaMarketPlace system.
- 6) The Agency assumes no liability for merchandise shipped to other than the specified destination.
- 7) Items received in excess of quantities specified may, at Agency's option, be returned at the Vendor's expense. Substitutions are not permitted.

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