

**CONTRACT
STATE OF FLORIDA
DEPARTMENT OF COMMERCE**

THIS CONTRACT (“Contract”) is made and entered into by and between the State of Florida, Department of Commerce (“Commerce”) formerly known as Department of Economic Opportunity (“Commerce”), and ***Insert Contractor Name Here*** (“Contractor”). Commerce and Contractor are sometimes referred to herein individually as a “Party” and collectively as “the Parties.”

I. CONTRACTOR AGREES:

A. Attachment 1, Scope of Work:

Contractor agrees to provide the goods and/or services in accordance with the conditions and criteria specified herein, and in Attachment 1, Scope of Work.

B. Type of Contract:

This Contract is a ***fixed price*** Contract.

C. Contract Dates:

This Contract shall become effective on ***Insert date [month,day, year] for this contract to begin*** or the date of signature by both Parties and shall end on ***Insert end date for this contract***. Commerce shall not be obligated to pay for costs incurred related to this Contract prior to its beginning date or after its ending date.

D. Contract Payment:

This Contract shall not exceed ***Insert contract amount here*** which shall be paid by Commerce in consideration for Contractor’s provision of goods and/or services as set forth by the terms and conditions of this Contract. The State of Florida and Commerce’s performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature and availability of any and all applicable federal funds. Commerce shall be the final authority as to the availability of funds for this Contract, and as to what constitutes an “annual appropriation” of funds to complete this Contract. If such funds are not appropriated or available for the Contract purpose, such event will not constitute a default on Commerce or the State. Commerce agrees to notify Contractor in writing at the earliest possible time if funds are not appropriated or available. The cost for services rendered under any other Contract or to be paid from any other source is not eligible for reimbursement under this Contract.

E. Requirements of paragraphs (a) – (i) of subsection 287.058(1), Florida Statutes (F.S.):

1. Contractor shall submit bills for fees or other compensation for services or expenses in sufficient detail for a proper pre-audit and post-audit thereof.

2. If travel expenses are authorized, Contractor shall submit bills for such travel expenses and shall be reimbursed only in accordance with section 112.061, F.S.
3. Contractor shall allow public access to all documents, papers, letters or other materials made or received by Contractor in conjunction with this Contract, unless the records are exempt from section 24(a) of Article I of the State Constitution and section 119.07(1), F.S. It is expressly understood that Commerce may unilaterally cancel this Contract for Contractor's refusal to comply with this provision.
4. Contractor shall perform all tasks contained in Attachment 1, Scope of Work.
5. Receipt by Contractor of Commerce's written acceptance of the units of deliverables specified herein is a condition precedent to payment under this Contract and is contingent upon Contractor's compliance with the specified performance measure (i.e., each deliverable must satisfy at least the minimum acceptable level of service specified in the Scope of Work and Commerce shall apply the applicable criteria stated in the Scope of Work to determine satisfactory completion of each deliverable).
6. Contractor shall comply with the criteria and final date by which such criteria must be met for completion of this Contract.
7. **Renewal and Extension:** If the Contract was procured by an exceptional purchase pursuant to subsections 287.057(3)(a) or (3)(c), F.S., it may not be renewed. If the Contract was competitively procured, the price of the renewal must be included in the response to the Invitation to Bid (ITB), Request for Proposal (RFP), or Invitation to Negotiate (ITN) and the renewal price for the Contract shall not exceed that as set forth in the response to the ITB, RFP, or ITN. Subsection 287.057(14), F.S., provides that contracts for commodities or contractual services may be renewed on a yearly basis for a period of up to three years after the initial contract, or for a period no longer than the term of the original contract, whichever is longer. Renewals are contingent upon the availability of funds, satisfactory performance evaluations by Commerce, and at the discretion of Commerce. Costs for any renewal may not be charged. This Contract may be renewed for a period not to exceed (Insert renewal period here, choose one of the following: one (1) year; two (2) years; three (3) years; the original term of the Contract; or, shall not be renewed). Extension of the contract shall be at Commerce's sole discretion and in compliance with section 287.057(12), F.S.
8. If Contractor fails to perform in accordance with the Contract, Commerce shall apply the financial consequences specified herein.
9. Unless otherwise agreed in writing, intellectual property rights to preexisting property will remain with Contractor; whereas, intellectual property rights to all property created or otherwise developed by Contractor in performance of this Agreement will be owned by the State of Florida through Commerce. Proceeds derived from the sale, licensing, marketing, or other authorization related to any such Commerce-controlled intellectual property right shall be handled in the manner specified by applicable state statute.

F. Governing Laws:

1. State of Florida Law:

- a. Contractor agrees that this Contract is executed and entered into in the State of Florida, and shall be construed, performed, and enforced in all respects in accordance with the laws, rules, and regulations of the State of Florida. Each Party shall perform its obligations herein in accordance with the terms and conditions of the Contract. Without limiting the provisions of Section II.D., Dispute Resolution, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, the Parties waive any right to jury trial. For avoidance of doubt, should any term of this Contract conflict with any applicable law, rule, or regulation, the law, rule, or regulation shall control over the provisions of this Contract.
- b. If applicable, Contractor agrees that it is in compliance with the rules for e-procurement as directed by Rule 60A-1.033, F.A.C. and that it will maintain eligibility for this Contract through the MyFloridaMarketplace.com system.
- c. Commerce shall ensure compliance with section 11.062, F.S., and section 216.347, F.S. Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly: (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty; or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of Commerce's Inspector General, or other authorized State official, Contractor shall provide any type of information the Inspector General deems relevant to Contractor's integrity or responsibility. Such information may include, but shall not be limited to, Contractor's business or financial records, documents, or files of any type or form that refer to or relate to this Contract. Contractor shall retain such records for the longer of: (1) five years after the expiration of the Contract; or (2) the period required by the General Records Schedules maintained by the Florida Department of State available at:
<https://dos.myflorida.com/library-archives/records-management/general-records-schedules/>.
- d. 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 Contractor's compliance with the terms of this or any other agreement between Contractor and the State which results in the suspension or debarment of 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. Contractor shall not be responsible for any costs of investigations that do not result in Contractor's suspension or debarment. Contractor understands and will comply with the requirements of subsection 20.055(5), F.S., including but not necessarily limited to, the duty of Contractor and any of Contractor's subcontractors to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to section 20.055, F.S.

- e. **Public Entity Crime:** Pursuant to subsection 287.133(2)(a), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit 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, F.S., for **Category Two** for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Furthermore, Contractor will complete and provide the certification in Attachment 2.

- f. **Advertising:** Subject to chapter 119, F.S., Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from Commerce, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying Commerce or the State as a reference, or otherwise linking Contractor's name and either a description of the Contract or the name of Commerce or the State in any material published, either in print or electronically, to any entity that is not a Party to the Contract, except potential or actual authorized distributors, dealers, resellers, or service representatives.

- g. **Sponsorship:** As required by section 286.25, F.S., if Contractor is a nongovernmental organization which sponsors a program financed wholly or in part by state funds, including any funds obtained through this Contract, it shall, in publicizing, advertising, or describing the sponsorship of the program, state: "Sponsored by (Contractor's name) and the State of Florida, Department of Economic Opportunity." If the sponsorship reference is in written material, the words "State of Florida, Department of Economic Opportunity" shall appear in the same size letters or type as the name of the organization.

- h. **Mandatory Disclosure Requirements:**
 - (1) **Conflict of Interest:** This Contract is subject to chapter 112, F.S. Contractors shall disclose the name of any officer, director, employee, or other agent who is also an employee of the State. Contractors shall also disclose the name of any State employee who owns, directly or indirectly, more than a five percent (5%) interest in Contractor or its affiliates.

 - (2) **Convicted Vendors:** Contractor shall disclose to Commerce if it, or any of its affiliates, as defined in section 287.133(1)(a) of the Florida Statutes, is on the convicted vendor list. A person or affiliate placed on the convicted vendor list following a conviction for a public entity crime is prohibited from doing any of the activities listed in Section I.F.1.e. above for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

 - (3) **Vendors on Scrutinized Companies Lists:** In executing this Contract, Contractor certifies that it is not listed on the Scrutinized Companies that Boycott Israel List created pursuant to section 215.4725, F.S., or is engaged in a boycott of Israel, that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the

Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, F.S., or engaged in business operations in Cuba or Syria.

- (a) Pursuant to section 287.135(5), F.S., Commerce may immediately terminate this Contract for cause if Contractor is found to have submitted a false certification or if Contractor is placed on the Scrutinized Companies that Boycott Israel List, or is engaged in boycott of Israel or placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, has been engaged in business operations in Cuba or Syria.
- (b) If Commerce determines that Contractor has submitted a false certification, Commerce will provide written notice to Contractor. Unless Contractor demonstrates in writing, within ninety (90) days of receipt of the notice, that Commerce's determination of false certification was made in error, Commerce shall bring a civil action against Contractor. If Commerce's determination is upheld, a civil penalty equal to the greater of \$2 million or twice the amount of this Contract shall be imposed on Contractor, and Contractor will be ineligible to bid on any contract with an agency or local governmental entity for three (3) years after the date of Commerce's determination of false certification by Contractor.
- (c) In the event that federal law ceases to authorize the states to adopt and enforce the contracting prohibition identified herein, this provision shall be null and void.

(4) Discriminatory Vendors: Contractor shall disclose to Commerce if it or any of its affiliates, as defined by section 287.134(1)(a.), F.S., appears on the discriminatory vendor list. An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134, F.S. may not:

- (a) submit a bid, proposal, or reply on a contract or agreement to provide any goods or services to a public entity;
- (b) submit a bid, proposal, or reply on a contract or agreement with a public entity for the construction or repair of a public building or public work;
- (c) submit bids, proposals, or replies on leases of real property to a public entity;
- (d) be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract or agreement with any public entity; or
- (e) transact business with any public entity.

i. Abuse, Neglect, and Exploitation Incident Reporting:

In compliance with sections 39.201 and 415.1034, F.S., an employee of Contractor who knows or has reasonable cause to suspect that a child, aged person, or disabled adult is or has been abused, neglected, or exploited shall immediately report such knowledge or suspicion to the Florida Abuse Hotline by calling 1-800-96ABUSE, or via the web reporting

option at <https://www.myflfamilies.com/service-programs/abuse-hotline>, or via fax at 1-800-914-0004.

j. Information Release

- (1)** Contractor shall keep and maintain public records required by Commerce to perform Contractor's responsibilities hereunder. Contractor shall, upon request from Commerce's custodian of public records, provide Commerce with a copy of the requested records or allow the records to be inspected or copied within a reasonable time per the cost structure provided in chapter 119, F.S., and in accordance with all other requirements of chapter 119, F.S., or as otherwise provided by law. Upon expiration or termination of this Contract, Contractor shall transfer, at no cost, to Commerce all public records in possession of Contractor or keep and maintain public records required by Commerce to perform the service. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Commerce, upon request from the Commerce's custodian of records, in a format that is compatible with the information technology systems of Commerce.
- (2)** If Commerce does not possess a record requested through a public records request, Commerce shall notify the Contractor of the request as soon as practicable, and Contractor must provide the records to Commerce or allow the records to be inspected or copied within a reasonable time. If Contractor does not comply with Commerce's request for records, Commerce shall enforce the provisions set forth in this Contract. A Contractor who fails to provide public records to Commerce within a reasonable time may be subject to penalties under section 119.10, F.S.
- (3)** Commerce does not endorse any contractor, commodity or service. No public disclosure or news release pertaining to this Contract shall be made without the prior written approval of Commerce. Contractor is prohibited from using contract information, sales values/volumes and/or Commerce customers in sales brochures or other promotions, including press releases, unless prior written approval is obtained from Commerce.
- (4)** Contractor acknowledges that Commerce is subject to the provisions of chapter 119, F.S., relating to public records and that reports, invoices, and other documents Contractor submits to Commerce under this Contract may constitute public records under Florida Statutes. Contractor shall cooperate with Commerce regarding Commerce's efforts to comply with the requirements of chapter 119, F.S.
- (5)** If Contractor submits records to Commerce that are confidential and exempt from public disclosure as trade secrets or proprietary confidential business information, such records should be identified as such by Contractor prior to submittal to Commerce. Failure to identify the legal basis for each exemption from the requirements of chapter 119, F.S., prior to submittal of the record to Commerce serves as Contractor waiver of a claim of exemption. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the

duration of the Contract term and following completion of the Contract if the Contractor does not transfer the records to Commerce upon termination of the Contract.

- (6) Contractor shall allow public access to all records made or received by Contractor in conjunction with this Contract, unless the records are exempt from section 24(a) of Article I of the State Constitution and section 119.07(1), F.S. For records made or received by Contractor in conjunction with this Contract, Contractor shall respond to requests to inspect or copy such records in accordance with chapter 119, F.S.
- (7) In addition to Contractor's responsibility to directly respond to each request it receives for records made or received by Contractor in conjunction with this Contract and to provide the applicable public records in response to such request, Contractor shall notify Commerce of the receipt and content of such request by sending an e-mail to PRRequest@deo.myflorida.com within one (1) business day from receipt of such request.
- (8) Contractor shall notify Commerce verbally within twenty-four (24) chronological hours and in writing within seventy-two (72) chronological hours if any data in Contractor's possession related to this Contract is subpoenaed or improperly used, copied, or removed (except in the ordinary course of business) by anyone except an authorized representative of Commerce. Contractor shall cooperate with Commerce in taking all steps as Commerce deems advisable to prevent misuse, regain possession, and/or otherwise protect the State's rights and the data subject's privacy.
- (9) **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 by telephone at 850-245-7140, via e-mail at PRRequest@deo.myflorida.com, or by mail at Department of Economic Opportunity, Public Records Coordinator, 107 East Madison Street, Caldwell Building, Tallahassee, Florida 32399-4128.**

k. **Funding Requirements.** Intentionally Blank.

2. Federal Law and Regulations:

- a. Contractor shall ensure that all its activities under this Contract shall be conducted in conformance with these provisions, as applicable: 45 C.F.R. Part 75, 29 C.F.R. Part 95, 2 CFR Part 200, 20 CFR Part 601, *et seq.*, and all other applicable federal regulations.
- b. Contractor shall comply with all applicable federal laws, including but not limited to:

- (1)** The Temporary Assistance for Needy Families Program (“TANF”), 45 CFR Parts 260-265, the Social Services Block Grant (“SSBG”), 42 U.S.C. 1397d, and other applicable federal regulations and policies promulgated thereunder.
- (2)** Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*, which prohibits discrimination on the basis of race, color or national origin.
- (3)** Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability.
- (4)** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681, *et seq.*, which prohibits discrimination on the basis of sex in educational programs.
- (5)** The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.*, which prohibits discrimination on the basis of age.
- (6)** Section 654 of the Omnibus Budget Reconciliation Act of 1981, as amended, 42 U.S.C. 9849, which prohibits discrimination on the basis of race, creed, color, national origin, sex, handicap, political affiliation or beliefs.
- (7)** The American with Disabilities Act of 1990, Public Law 101-336, which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities.
- (8)** The Pro-Children Act: Contractor agrees to comply with the Pro-Children Act of 1994, 20 U.S.C. 6083. Failure to comply with the provisions of the law may result in the imposition of civil monetary penalty up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. This clause is applicable to all approved sub-contracts. In compliance with Public Law (Pub. L.) 103-277, the Contract shall not permit smoking in any portion of any indoor facility used for the provision of federally funded services including health, day care, early childhood development, education or library services on a routine or regular basis, to children up to age 18.
- (9)** The Davis-Bacon Act, as amended, 40 U.S.C. 276a to 276a-7, and as supplemented by the Department of Labor (DOL) regulations 29 CFR Part 5, the Copeland Anti-Kickback Act, 40 U.S.C. 276c and 18 U.S.C. 874, as supplemented by the DOL regulations 29 CFR Part 3, and the Contract Work Hours and Safety Standards Act, 40 U.S.C. 327-333, as supplemented by the DOL regulations 29 CFR Part 5, regarding labor standards for federally assisted construction subagreements.
- (10)** The Clean Air and Water Act: If this Contract is in excess of \$100,000, Contractor shall comply with all applicable standards, orders or regulations issued under the Clean Air Act, as amended, 42 U.S.C. 7401, Section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368, *et seq.*, Executive Order 11738 and Environmental Protection Agency regulations. Contractor shall report any violation of the above to Commerce.
- (11)** Energy Efficiency: Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State of Florida’s energy

conservation plan issued in compliance with the Energy Policy and Conservation Act, Pub. L. 94-163.

- (12)** The Byrd Anti-Lobbying Amendment (31 U.S.C. 1352): Contractors who apply or bid for an award of \$100,000 or more shall file the required certification (see Certification Regarding Lobbying Form within Attachment 2 of this Contract). 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.
- (13)** Debarment and Suspension: When applicable, as required by the regulation implementing Executive Order (EO) No. 12549 and EO No. 12689, Debarment and Suspension, 2 CFR Part 2998, Contractor must not be, nor within the three-year period preceding the effective date of the Contract have been, debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency. No contract shall be awarded to parties listed on the U. S. Government Services Administration List of Parties Excluded from Federal Procurement or Non-Procurement Programs. Contractor must provide a completed Certification Regarding Debarment, Suspension, and Other Responsibility Matters, included in Attachment 2 of this Contract.
- (14)** Public Announcements and Advertising: When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with federal money, Contractor shall clearly state (1) the percentage of the total costs of the program or project which will be financed with federal money, (2) the dollar amount of federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.
- (15)** Purchase of American-Made Equipment and Products: Contractor assures that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Agreement will be American-made.
- (16)** Equal Treatment for Faith-Based Organizations. Prohibits any State or local government receiving funds under any Department program, or any intermediate organization with the same duties as a governmental entity, from discriminating for or against an organization on the basis of the organization's religious character or affiliation. Prohibits religious organizations from engaging in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance. Prohibits an organization that participates in programs funded by direct financial assistance from the Department, in providing services, from discriminating against a program beneficiary or prospective program beneficiary on the basis of religion or religious

belief. Any restrictions on the use of grant funds shall apply equally to religious and non-religious organizations.

- (17)** Rights to Inventions Made Under Contract or Agreement: Contracts or agreements for the performance of experimental, development, or research work shall provide for the rights of the Federal Government and Contractor in any resulting invention in accordance with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contract and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- (18)** The Consolidated Appropriations Act, 2010, Division E, Section 511 (Pub. L. 111-117), which prohibits distribution of federal funds made available under the Act to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries. The Continuing Appropriations Act, 2011, Sections 101 and 103 (Pub. L. 111-242), provides that appropriations made under Pub. L. 111-117 are available under the conditions provided by Pub. L. 111-117.
- (19)** E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.
- (20)** Contract Work Hours and Safety Standards Act (40 U.S.C. §327–333) — If this Contract involves federal funding in excess of \$2,000 for construction contracts or in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers, compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR Part 5) is required. Under section 102 of the Act, each contractor shall be required to 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 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall 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 or transmission of intelligence.
- (21)** Resource Conservation and Recovery Act (RCRA). Under RCRA (Pub. L. 94–580 codified at 42 U.S.C. 6962), state and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.
- (22)** Immigration Reform and Control Act. Contractor shall comply with the requirements of the Immigration Reform and Control Act of 1986, which requires employment verification and retention of verification forms for any individuals hired who will perform any services under the contract.

G. Contractor Payments:

1. Contractor will provide Commerce's Contract Manager invoices in accordance with the requirements of the State of Florida Guide for State Expenditures (http://www.myfloridacfo.com/aadir/reference_guide/) with detail sufficient for a proper pre-audit and post-audit thereof. Invoices must also comply with the following:
 - a. Invoices must be legible and must clearly reflect the goods/services that were provided in accordance with the terms of the Contract for the invoice period. Payment does not become due under the Contract until the invoiced deliverable(s) and any required report(s) are approved and accepted by Commerce.
 - b. Invoices must contain Contractor's name, address, federal employer identification number or other applicable Contractor identification number, the Contract number, the invoice number, and the invoice period. Commerce or the State may require any additional information from Contractor that Commerce or the State deems necessary to process an invoice.
 - c. Invoices must be submitted in accordance with the time requirements specified in the Scope of Work.
2. At Commerce's or the State's option, Contractor may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Contractor supply electronic invoices in lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to the Commerce Contract Manager through the Ariba Supplier Network (ASN) in one of the following mechanisms – EDI 810, cXML, or web-based invoice entry within the ASN.
3. Payment shall be made in accordance with section 215.422, F.S., Rule 69I-24, F.A.C., and section 287.0585, F.S., which govern time limits for payment of invoices. Section 215.422, F.S., provides that agencies have five (5) working days to inspect and approve goods and services unless the solicitation documents or the Contract Scope of Work specify otherwise. Commerce has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved. The Scope of Work may specify conditions for retainage. Invoices returned to a Contractor due to preparation errors will result in a delay of payment. Invoice payment requirements do not start until a properly completed invoice is provided to Commerce. Commerce is responsible for all payments under the Contract.
4. Section 55.03(1), F.S., identifies the process applicable to the determination of the rate of interest payable on judgments and decrees, and pursuant to section 215.422(3)(b), F.S., this same process applies to the determination of the rate of interest applicable to late payments to vendors for goods and services purchased by the State and for contracts which do not specify a rate of interest. The applicable rate of interest is published at:

<http://www.myfloridacfo.com/aadir/interest.htm>

H. Final Invoice:

Contractor shall submit the final invoice for payment to Commerce no later than **60** days after the Contract ends or is terminated. If Contractor fails to do so, Commerce, in its sole discretion, may refuse to honor any requests submitted after this time period and may consider Contractor to have forfeited any and all rights to payment under this Contract.

I. Return or Recoupment of Funds:

1. Contractor shall return to Commerce any overpayments due to unearned funds or funds disallowed pursuant to the terms of this Contract that were disbursed to Contractor by Commerce. In the event Contractor or its independent auditor discovers that overpayment has been made, Contractor shall repay said overpayment within forty (40) calendar days without prior notification from Commerce. In the event Commerce first discovers an overpayment has been made, Commerce will notify Contractor by letter. Should repayment not be made in a timely manner, Commerce shall be entitled to charge interest at the lawful rate of interest on the outstanding balance beginning forty (40) calendar days after the date of notification or discovery. Refunds should be sent to Commerce Contract Manager, and made payable to the "Department of Commerce."
2. Notwithstanding the damages limitations of Section II.F., if Contractor's non-compliance with any provision of the Contract results in additional cost or monetary loss to Commerce or the State of Florida, Commerce can recoup that cost or loss from monies owed to Contractor under this Contract or any other contract between Contractor and any State entity. In the event the discovery of this cost or loss arises when no monies are available under this Contract or any other contract between Contractor and any State entity, Contractor will repay such cost or loss in full to Commerce within thirty (30) days of the date of notice of the amount owed, unless Commerce agrees, in writing, to an alternative timeframe.

J. 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) 413-5516 or by calling the Chief Financial Officer's Hotline, (800) 342-2762.

K. Audits and Records:

1. Representatives of Commerce, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability or representatives of the federal government and their duly authorized representatives shall have access to any of Contractor's books, documents, papers, and records, including electronic storage media, as they may relate to this Contract, for the purposes of conducting audits or examinations or making excerpts or transcriptions.
2. Contractor shall maintain books, records, and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by Commerce under this Contract.

3. Contractor will provide a financial and compliance audit to Commerce, if applicable, and ensure that all related party transactions are disclosed to the auditor.
4. Contractor shall retain all Contractor records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Contract for a period of five (5) state fiscal years after completion or termination of this Contract, or if an audit has been initiated and audit findings have not been resolved at the end of five (5) state fiscal years, the records shall be retained until resolution of the audit findings through litigation or otherwise. Contractor shall cooperate with Commerce to facilitate the duplication and transfer of such records or documents upon request of Commerce. Additional federal requirements may be identified in Attachment 1, Scope of Work.
5. Contractor shall include the aforementioned audit and record keeping requirements in all approved subcontracts and assignments.

L. Employment Eligibility Verification:

1. E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States. There is no charge to employers to use E-Verify. The Department of Homeland Security's E-Verify system can be found at: <https://www.e-verify.gov/>.
2. In accordance with section 448.095, F.S., the State of Florida expressly requires the following:
 - (1) Every public agency and its contractors and subcontractors shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. A public agency or a contractor or subcontractor thereof may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.
 - (2) An employer shall verify each new employee's employment eligibility within three (3) business days after the first day that the new employee begins working for pay as required under 8 C.F.R. 274a. Beginning July 1, 2023, a private employer with 25 or more employees shall use the E-Verify system to verify a new employee's employment eligibility.
3. If an entity does not use E-Verify, the entity shall enroll in the E-Verify system prior to hiring any new employee or retaining any contract employee after the effective date of this Agreement.

M. Duty of Continuing Disclosure of Legal Proceedings:

1. Prior to execution of this Contract, Contractor must disclose all prior or on-going civil or criminal litigation, investigations, arbitration or administrative proceedings (Proceedings) involving Contractor (and each subcontractor) in a written statement to Commerce's Contract Manager. Thereafter, Contractor has a continuing duty to promptly disclose all Proceedings upon occurrence.

2. This duty of disclosure applies to Contractor's or subcontractor's officers and directors when any Proceeding relates to the officer or director's business or financial activities. Details of settlements that are prevented from disclosure by the terms of the settlement may be annotated as such.
3. Contractor shall promptly notify the Commerce's Contract Manager of any Proceeding relating to or affecting the Contractor's or subcontractor's business. If the existence of such Proceeding causes the State concern that the Contractor's ability or willingness to perform the Contract is jeopardized, Contractor shall be required to provide the Commerce's Contract Manager all reasonable assurances requested by Commerce to demonstrate that:
 - a. Contractor will be able to perform the Contract in accordance with its terms and conditions; and,
 - b. Contractor and/or its employees, agents or subcontractor(s) have not and will not engage in conduct in performing services for Commerce which is similar in nature to the conduct alleged in such Proceeding.

N. Assignments and Subcontracts:

1. Contractor agrees to neither assign the responsibility for this Contract to another party nor subcontract for any of the work contemplated under this Contract, or amend any such assignment or subcontract, without prior written approval of Commerce. Any sublicense, assignment, or transfer occurring without the prior approval of Commerce, shall be null and void.
2. Contractor agrees to be responsible for all work performed and all expenses incurred in fulfilling the obligations of this Contract. If Commerce permits Contractor to subcontract all or part of the work contemplated under this Contract, including entering into subcontracts with vendors for services and commodities, it is understood by Contractor that all such subcontract arrangements shall be evidenced by a written document containing all provisions necessary to ensure subcontractor's compliance with applicable state and federal law. Contractor further agrees that Commerce shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and Contractor shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract. Contractor, at its expense, will defend Commerce against such claims.
3. Contractor agrees that all Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all Commerce security and administrative requirements identified herein. Commerce may conduct, and Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by Contractor. Commerce may refuse access to, or require replacement of, any of Contractor's employees, subcontractors, or agents for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with Commerce's security or administrative requirements identified herein. Such refusal shall not

relieve Contractor of its obligation to perform all work in compliance with the Contract. Commerce may reject and bar from any facility for cause any of Contractor's employees, subcontractors, or agents.

4. Contractor agrees that the State of Florida shall at all times be entitled to assign or transfer its rights, duties, or obligations under this Contract to another governmental agency in the State of Florida, upon giving prior written notice to Contractor. In the event the State of Florida approves transfer of Contractor's obligations, Contractor remains responsible for all work performed and all expenses incurred in connection with the Contract. In addition, this Contract shall bind the successors, assigns, and legal representatives of Contractor and of any legal entity that succeeds to the obligations of the State of Florida.
5. Contractor agrees to make payments to the subcontractor within seven (7) working days after receipt of full or partial payments from Commerce in accordance with section 287.0585, F.S., unless otherwise stated in the Contract between Contractor and subcontractor. Contractor's failure to pay its subcontractors within seven (7) working days will result in a penalty charged against Contractor and paid to the subcontractor in the amount of one-half of one (1) percent of the amount due per day from the expiration of the period allowed herein for payment. Such penalty shall be in addition to actual payments owed and shall not exceed fifteen (15) percent of the outstanding balance due.
6. Contractor agrees that Commerce may undertake or award supplemental contracts for work related to the Contract. Contractor and its subcontractors shall cooperate with such other contractors and Commerce in all such cases.
7. Contractor shall provide a monthly Minority and Service-Disabled Veteran Business Enterprise Report for each invoice period summarizing the participation of certified and non-certified minority and service-disabled veteran subcontractors/material suppliers for that period, and project to date. The report shall include the names, addresses and dollar amount of each certified and non-certified Minority Business Enterprise and Service-Disabled Veteran Enterprise participant and a copy must be forwarded to Commerce's Contract Manager. The Office of Supplier Diversity at (850) 487-0915 will assist in furnishing names of qualified minorities. Commerce's Minority Coordinator at (850) 245-7260 will assist with questions and answers.
8. Commerce shall retain the right to reject any of Contractor's or subcontractor's employees whose qualifications or performance, in Commerce's judgment, are insufficient.

O. Purchasing:

1. **Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE):** In accordance with section 946.515(6), F.S., if a product or service required for the performance of this Contract is certified by or is available from PRIDE and has been approved in accordance with subsection 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 subsections 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.

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

- 2. Products Available from the Blind or Other Handicapped (RESPECT):** In accordance with subsection 413.036(3), F.S., if a product or service required for the performance of this Contract 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, F.S., in the same manner and under the same procedures set forth in subsections 413.036(1) and (2), 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 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>.

- 3.** Contractor agrees to procure any recycled products or materials which are the subject of or are required to carry out this Contract in accordance with section 403.7065, F.S.

P. MyFloridaMarketPlace Transaction Fee:

- 1.** The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System (System). Pursuant to subsection 287.057(24), F.S., all payments shall be assessed a Transaction Fee of one percent (1.0%), which Contractor shall pay to the State, unless exempt pursuant to Rule 60A-1.031, F.A.C.
- 2.** For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to Contractor. If automatic deduction is not possible, Contractor shall pay the Transaction Fee pursuant to Rule 60A-1.031, F.A.C. By submission of these reports and corresponding payments, Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.
- 3.** Contractor shall receive a credit for any Transaction Fee paid by Contractor for the purchase of any item(s) if such item(s) are returned to Contractor through no fault, act, or omission of Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to Contractor's failure to perform or comply with specifications or requirements of the Contract.
- 4.** Failure to comply with these requirements shall constitute grounds for declaring Contractor in default and recovering reprocurement costs from Contractor in addition to all outstanding

fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES SHALL BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.**

Q. Nonexpendable Property:

1. For the requirements of this Section of the Contract, "nonexpendable property" is the same as "property" as defined in section 273.02, F.S. (equipment, fixtures, and other tangible personal property of a non-consumable and nonexpendable nature, with a value or cost of \$1,000 or more, and a normal expected life of one year or more; hardback-covered bound books that are circulated to students or the general public, with a value or cost of \$25 or more; and hardback-covered bound books, with a value or cost of \$250 or more).
2. All nonexpendable property, purchased under this Contract, shall be listed on the property records of Contractor. Contractor shall inventory annually and maintain accounting records for all nonexpendable property purchased and submit an inventory report to COMMERCE with the final expenditure report. The records shall include, at a minimum, the following information: property tag identification number, description of the item(s), physical location, name, make or manufacturer, year, and/or model, manufacturer's serial number(s), date of acquisition, and the current condition of the item.
3. At no time shall Contractor dispose of nonexpendable property purchased under this Contract for these services without the written permission of and in accordance with instructions from Commerce.
4. Immediately upon discovery, Contractor shall notify Commerce, in writing, of any property loss with the date and reason(s) for the loss.
5. Contractor shall be responsible for the correct use of all nonexpendable property furnished under this Contract.
6. A formal Contract amendment is required prior to the purchase of any item of nonexpendable property not specifically listed in the approved Contract budget.
7. Title (ownership) to all nonexpendable property acquired with funds from this Contract shall be vested in Commerce and said property shall be transferred to Commerce upon completion or termination of the Contract unless otherwise authorized in writing by Commerce.

R. Information Resource Acquisition:

Contractor shall obtain prior written approval from the appropriate Commerce approving authority before purchasing any Information Technology Resource (ITR) or conducting any activity that will impact Commerce's electronic information technology equipment or software, as both terms are defined in Commerce Policy Number 5.01, in any way. ITR includes computer hardware, software, networks, devices, connections, applications, and data.

S. Insurance:

During the Contract, including the initial Contract term, renewal(s), and extensions, Contractor, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits as may be reasonably associated with the Contract. Providing and maintaining adequate

insurance coverage is a material obligation of Contractor, and failure to maintain such coverage may void the Contract. The limits of coverage under each policy maintained by Contractor shall not be interpreted as limiting Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers licensed and authorized to write policies in Florida.

Upon execution of this Contract, Contractor shall provide Commerce written verification of the existence and amount for each type of applicable insurance coverage. Within thirty (30) days of the effective date of the Contract, Contractor shall furnish Commerce proof of applicable insurance coverage by standard ACORD form certificates of insurance. In the event any applicable coverage is cancelled by the insurer for any reason, Contractor shall immediately notify Commerce of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within fifteen (15) business days after the cancellation of coverage. The insurance certificate must name Commerce as an additional insured and identify Commerce's Contract Number. Copies of new insurance certificates must be provided to Commerce's Contract Manager with each insurance renewal.

Commerce shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of Contractor providing such insurance. The following types of insurance are required.

1. Contractor's Commercial General Liability Insurance:

By execution of this Contract, unless Contractor is a state agency or subdivision as defined by Subsection 768.28(2), F.S., Contractor shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during this Contract. A self-insurance program established and operating under the laws of the State of Florida may provide such coverage.

2. Workers' Compensation and Employer's Liability Insurance:

Contractor, at all times during the Contract, at its sole expense, shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract, which, as a minimum, shall be: workers' compensation and employer's liability insurance in accordance with chapter 440, F.S., with minimum employer's liability limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policy shall cover all employees engaged in any Contract work.

3. Other Insurance:

During the Contract term, Contractor shall maintain any other insurance as required in Attachment 1, Scope of Work.

T. Confidentiality and Safeguarding Information:

1. Each Party may have access to confidential information made available by the other. The provisions of the Florida Public Records Act, Chapter 119, F.S., and other applicable state and federal laws will govern disclosure of any confidential information received by the State of Florida.

2. Contractor must implement procedures to ensure the appropriate protection and confidentiality of all data, files, and records involved with this Contract.
3. Except as necessary to fulfill the terms of this Contract and with the permission of COMMERCE, Contractor shall not divulge to third parties any confidential information obtained by Contractor or its agents, distributors, resellers, subcontractors, officers, or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or COMMERCE.
4. Contractor agrees not to use or disclose any information concerning a recipient of services under this Contract for any purpose not in conformity with state and federal law or regulations except upon written consent of the recipient, or his responsible parent or guardian when authorized by law, if applicable.
5. If Contractor has access to either Commerce's network or any Commerce applications, or both, in order to fulfill Contractor's obligations under this Contract, Contractor agrees to abide by all applicable Commerce Information Technology Security procedures and policies. Contractor (including its employees, subcontractors, agents, or any other individuals to whom Contractor exposes confidential information obtained under this Contract), shall not store, or allow to be stored, any confidential information on any portable storage media (*e.g.*, laptops, thumb drives, hard drives, *etc.*) or peripheral device with the capacity to hold information. Failure to strictly comply with this provision shall constitute a breach of Contract.
6. Contractor shall notify Commerce in writing of any disclosure of unsecured confidential information of Commerce by Contractor, its employees, agents, or representatives which is not in compliance with the terms of this Contract (of which it becomes aware). Contractor also shall report to Commerce any Security Incidents of which it becomes aware, including those incidents reported to Contractor by its sub-contractors or agents. For purposes of this Contract, "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of Commerce information in Contractor's possession or electronic interference with Commerce operations; however, random attempts at access shall not be considered a security incident. Contractor shall make a report to Commerce not more than seven (7) business days after Contractor learns of such use or disclosure. Contractor's report shall identify, to the extent known: (i) the nature of the unauthorized use or disclosure, (ii) the confidential information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by Commerce's Information Security Manager.
7. In the event of a breach of security concerning confidential personal information involved with this Contract, Contractor shall comply with section 501.171, F.S., as applicable. When notification to affected persons is required under this section of the statute, Contractor shall provide that notification, but only after receipt of Commerce's approval of the contents of the notice. Defined statutorily, and for purposes of this Contract, "breach of security" means the unauthorized access of data in electronic form containing personal information. Good

faith acquisition of personal information by an employee or agent of the Contractor is not a breach of security, provided the information is not used for a purpose unrelated to the Contractor's obligations under this Contract or is not subject to further unauthorized use.

U. Warranty of Ability to Perform:

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 Contractor's ability to satisfy its contract obligations. Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133, F.S., or on any similar list maintained by any other state or the federal government. Contractor shall immediately notify Commerce in writing if its ability to perform is compromised in any manner during the term of the Contract.

V. Patents, Copyrights, and Royalties:

1. Pursuant to section 286.021, F.S., if any discovery or invention arises or is developed in the course or as a result of work or services performed with funds from this Contract, Contractor shall refer the discovery or invention to Commerce who will refer it to the Department of State to determine 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 the Contract are hereby reserved to the State of Florida. The rights to any invention resulting from this Contract that is for the performance of experimental, developmental, or research work are governed by 37 CFR Part 401 and any of its implementing regulations as applicable. All data, both electronic and hard copies, created or received by Contractor during the Contract are the property of Commerce and must be surrendered to Commerce upon expiration, termination or cancellation of this Contract at no cost to Commerce.
2. Where activities supported by this Contract produce original writings, sound recordings, pictorial reproductions, drawings or other graphic representations and works of any similar nature, Commerce has the right to use, duplicate and disclose such materials in whole or in part, in any manner, for any purpose whatsoever and to allow others acting on behalf of Commerce to do so. In the event any books, manuals, films, websites, web elements, electronic information, or other copyrightable materials are produced Contractor shall notify Commerce. Any and all copyrights and intellectual property rights accruing under or in connection with the performance funded by this Contract are hereby reserved to the State of Florida.
3. In accordance with the provisions of section 1004.23, F.S., a State University is authorized in its own name to perform all things necessary to secure letters of patent, copyrights, and trademarks on any works it produces. Any action taken by the university in securing or exploiting such trademarks, copyrights, or patents shall, within thirty (30) days, be reported in writing by the president of the university to the Department of State in accordance with section 1004.23(6), F.S.

W. Independent Contractor Status:

In Contractor's performance of its duties and responsibilities under the Contract, it is mutually understood and agreed that Contractor is at all times acting and performing as an independent

contractor. Commerce shall neither have nor exercise any control or direction over the methods by which Contractor shall perform its work and functions other than as provided herein. Nothing in the Contract is intended to or shall be deemed to constitute a partnership or joint venture between the Parties.

1. Except where Contractor is a state agency, Contractor, its officers, agents, employees, subcontractors, or assignees, in performance of this Contract shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the State of Florida. Nor shall Contractor represent to others that, as Contractor, it has the authority to bind Commerce unless specifically authorized to do so.
2. Except where Contractor is a state agency, neither Contractor, nor its officers, agents, employees, subcontractors, or assignees are entitled to state retirement or state leave benefits, or to any other compensation of state employment as a result of performing the duties and obligations of this Contract.
3. Contractor agrees to take such actions as may be necessary to ensure that each subcontractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the State of Florida.
4. Unless justified by Contractor and agreed to by Commerce in Attachment 1, Scope of Work, Commerce will not furnish services of support (*e.g.*, office space, office supplies, telephone service, secretarial, or clerical support) to Contractor or its subcontractor or assignee.
5. COMMERCE shall not be responsible for withholding taxes with respect to Contractor's compensation hereunder. Contractor shall have no claim against Commerce for vacation pay, sick leave, retirement benefits, social security, workers' compensation, health or disability benefits, reemployment assistance benefits, or employee benefits of any kind. Contractor shall ensure that its employees, subcontractors, and other agents, receive benefits and necessary insurance (health, workers' compensation, reemployment assistance benefits) from an employer other than the State of Florida.
6. Contractor, at all times during the Contract, must comply with the reporting and Reemployment Assistance contribution payment requirements of chapter 443, F.S.

X. Electronic Funds Transfer:

Contractor agrees to enroll in Electronic Funds Transfer (EFT), offered by the State's Chief Financial Officer within thirty (30) days of the date the last Party has signed this Contract. Copies of the Authorization form and a sample blank enrollment letter can be found on the vendor instruction page at:

<https://www.myfloridacfo.com/Division/AA/Vendors/>

Questions should be directed to the EFT Section at (850) 413-5517. Once enrolled, invoice payments will be made by EFT.

II. CONTRACTOR AND COMMERCE AGREE:

A. Renegotiation or Modification:

The Parties agree to renegotiate this Contract if federal and/or state revisions of any applicable laws or regulations make changes to this Contract necessary. In addition to changes necessitated by law, Commerce may at any time, with written notice to Contractor, make changes within the general scope of the Contract. Such changes may include modification of the requirements, changes to processing procedures, or other changes as decided by Commerce. Any investigation necessary to determine the impact of the change shall be the responsibility of Contractor. Modifications of provisions of this Contract shall only be valid when they have been reduced to writing and duly signed and dated by all Parties.

B. Time is of the Essence:

Time is of the essence regarding the performance obligations set forth in this Contract. Any additional deadlines for performance for Contractor's obligation to timely provide deliverables under this Contract including but not limited to timely submittal of reports, are contained in Attachment 1, Scope of Work.

C. Termination:

1. Termination Due to the Lack of Funds:

In the event funds to finance this Contract become unavailable or if federal or state funds upon which this Contract is dependent are withdrawn or redirected, Commerce may terminate this Contract upon no less than twenty-four (24) hours' notice in writing to Contractor. Commerce shall be the final authority as to the availability of funds and will not reallocate funds earmarked for this Contract to another program thus causing "lack of funds." In the event of termination of this Contract under this provision, Contractor will be compensated for any work satisfactorily completed prior to notification of termination.

2. Termination for Cause:

Commerce may terminate the Contract if Contractor fails to: (1) deliver the product or services within the time specified in the Contract or any extension; (2) maintain adequate progress, thus endangering performance of the Contract; (3) honor any term of the Contract; or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. Contractor shall continue to perform any work not terminated. The rights and remedies of Commerce in this clause are in addition to any other rights and remedies provided by law or under the Contract. Contractor shall not be entitled to recover any cancellation charges or lost profits.

3. Termination for Convenience:

Commerce, by written notice to Contractor, may terminate this Contract in whole or in part when Commerce determines in its sole discretion that it is in the State's interest to do so. Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. Contractor shall not be entitled to recover any cancellation charges or lost profits.

D. Dispute Resolution:

Unless otherwise stated in Attachment 1, Scope of Work, disputes concerning the performance of the Contract shall be decided by Commerce, who shall reduce the decision to writing and serve a copy on Contractor. The decision shall be final and conclusive unless within twenty-one (21) days from the date of receipt, Contractor files with Commerce a petition for administrative hearing. Commerce's final order on the petition shall be final, subject to any right of Contractor to judicial review pursuant to section 120.68, F.S. Exhaustion of administrative remedies is an absolute condition precedent to 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, F.S.

E. Indemnification (NOTE: If Contractor is a state agency or subdivision, as defined in section 768.28(2), F.S., pursuant to section 768.28(19), F.S., neither Party indemnifies nor insures or assumes any liability for the other Party for the other Party's negligence):

1. Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and Commerce, 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 Contractor, its agents, employees, partners, or subcontractors, provided, however, that Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or Commerce.
2. Further, Contractor shall fully indemnify, defend, and hold harmless the State and Commerce 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 Commerce's misuse or modification of Contractor's products or Commerce's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order. If any product is the subject of an infringement suit, or in Contractor's opinion is likely to become the subject of such a suit, Contractor may at its sole expense procure for Commerce the right to continue using the product or to modify it to become non-infringing. If Contractor is not reasonably able to modify or otherwise secure Commerce the right to continue using the product, Contractor shall remove the product and refund Commerce the amounts paid in excess of a reasonable rental for past use. Commerce shall not be liable for any royalties.
3. Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or Commerce giving 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. Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State or Commerce in any legal action without Contractor's prior written consent, which shall not be unreasonably withheld.

F. Limitation of Liability:

For all claims against Contractor under this contract, regardless of the basis on which the claim is made, Contractor's liability under this contract for direct damages shall be limited to the greater of \$100,000 or the dollar amount of the contract. This limitation shall not apply to claims arising under the Indemnity paragraphs contained in this Contract.

Unless otherwise specifically enumerated in the Contract, 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 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 Commerce may, in addition to other remedies available to them at law or equity and upon notice to 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 Contractor or its affiliates to the State against any payments due Contractor under any Contract with the State.

G. Force Majeure and Notice of Delay from Force Majeure:

Neither Party shall be liable to the other for any delay or failure to perform under this Contract if such delay or failure is neither the fault nor the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party's control, or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting delay or disruption in the Party's performance obligation under this Contract. If the delay is excusable under this paragraph, the delay will not result in any additional charge or cost under the Contract to either Party. In the case of any delay Contractor believes is excusable under this paragraph, Contractor shall notify Commerce in writing of the delay or potential delay and describe the cause of the delay either: (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if Contractor could reasonably foresee that a delay could occur as a result; or (2) within five (5) calendar days after the date Contractor first had reason to believe that a delay could result, if the delay is not reasonably foreseeable. **THE FOREGOING SHALL CONSTITUTE 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. Commerce, in its sole discretion, will determine if the delay is excusable under this paragraph and will notify Contractor of its decision in writing. No claim for damages, other than for an extension of time, shall be asserted against Commerce. Contractor shall not be entitled to an increase in the Contract price or payment of any kind from Commerce 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, Contractor shall perform at no increased cost, unless Commerce determines, in its sole discretion, that the delay will significantly impair the value of the Contract to Commerce or the State, in which case, Commerce may do any or all of the following: (1) accept allocated performance or deliveries from Contractor, provided that Contractor grants preferential treatment to Commerce with respect to products or services subjected to allocation; (2) purchase from other sources (without recourse to and by Contractor for the related costs and expenses) to replace all or part of the products or

services that are the subject of the delay, which purchases may be deducted from the Contract quantity; or (3) terminate the Contract in whole or in part.

H. Severability:

If any provision, in whole or in part, of this Contract is held to be void or unenforceable by a court of competent jurisdiction, 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 remain in full force and effect.

I. Authority of Contractor's Signatory:

Upon execution, Contractor shall return the executed copies of this Contract in accordance with the instructions provided by Commerce along with documentation ensuring that the below signatory has authority to bind Contractor to this Contract as of the date of execution. Documentation may be in the form of a legal opinion from the Contractor's attorney, or other reliable documentation demonstrating such authority, and is hereby incorporated by reference. Commerce may, at its discretion, request additional documentation related to the below signatory's authority to bind Contractor to this Contract.

J. Execution in Counterparts:

This Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

K. Contact Information for Contractor and COMMERCE Contacts:

Contractor's Payee:

Contractor's Contract Manager:

Insert Contractor's payee name here	Insert Name of Contractor's Contract Manager
Insert street address here	Insert street address here
Insert city, state, zip	Insert city, state, zip
Insert telephone #	Insert telephone #
Insert fax #	Insert fax #
Insert email address	Insert email address

COMMERCE's Contract Manager:

InsertCommerce's Contractor name here

Insert street address here

Insert city, state, zip

Insert telephone #

Insert fax #

Insert email address

In the event any of the information provided in Section II.K. above changes, including the designation of a new Contract Manager, after the execution of this Contract, the Party making

such change will notify all other Parties in writing of such change. Such changes shall not require a formal amendment to the Contract.

L. Notices:

The contact information provided in accordance with Section II.K. above shall be used by the Parties for all communications under this Contract. Where the term “written notice” is used to specify a notice requirement herein, said notice shall be deemed to have been given (i) when personally delivered; (ii) when transmitted via facsimile with confirmation of receipt or email with confirmation of receipt if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid); (iii) the day following the day (except if not a business day then the next business day) on which the same has been delivered prepaid to a recognized overnight delivery service; or (iv) the third business day following the day on which the same is sent by certified or registered mail, postage prepaid, with return receipt.

M. Attachments and Exhibits: Attached to and made part of this Contract are the following Attachments and/or Exhibits, each of which is incorporated into, and is an integral part of, this Contract:

- **Attachment 1:** Scope of Work
- **Attachment 2:** Certifications and Assurances

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N. Execution:

I have read the above Contract and the attachments and exhibits thereto and understand each section and paragraph.

IN WITNESS THEREOF, and in consideration of the mutual covenants set forth above and in the attachments hereto, the Parties have caused to be executed this Contract by their undersigned officials duly authorized.

DEPARTMENT OF COMMERCE

INSERT CONTRACTOR NAME

By _____
Signature

Title **Type in Name**
Type in Title

Date _____

By _____
Signature

Title **Type in Name**
Type in Title

Date _____

Approved as to form and legal sufficiency, subject only to full and proper execution by the Parties.

**OFFICE OF GENERAL COUNSEL
DEPARTMENT OF COMMERCE**

By: _____

Approved Date: _____

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Attachment 1

SCOPE OF WORK

INCLUSION OF SOLICITATION DOCUMENTS AND CONTRACTOR RESPONSE

The original specifications and all addendums and responses to *Insert Correct ITB, RFP, or RFQ # Here*, and all representations, warranties and commitments in the response and related correspondence continue as contractual obligations under this Contract.

CONTRACTOR IS REQUIRED TO COMPLETE ATTACHMENT 2.

INSERT SCOPE OF WORK HERE

- End of Attachment 1 (Scope of Work) -

Attachment 2

CERTIFICATIONS AND ASSURANCES

Commerce will not award this Contract unless Contractor completes the CERTIFICATIONS AND ASSURANCES contained in this Attachment. In performance of this Contract, Contractor provides the following certifications and assurances:

- A. Debarment and Suspension Certification (29 CFR Part 95 and 45 CFR Part 75)
 - B. Certification Regarding Lobbying (29 CFR Part 93 and 45 CFR Part 93)
 - C. Nondiscrimination & Equal Opportunity Assurance (29 CFR Part 37 and 45 CFR Part 80)
 - D. Certification Regarding Public Entity Crimes, section 287.133, F.S.
 - E. Association of Community Organizations for Reform Now (ACORN) Funding Restrictions Assurance (Pub. L. 111-117)
 - F. Certification Regarding Scrutinized Companies Lists, section 287.135, F.S.
- A. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS – PRIMARY COVERED TRANSACTION.**

The undersigned Contractor certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal department or agency;
2. Have not within a three-year period preceding this Contract been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph A.2. of this certification; and/or
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause of default.

- B. **CERTIFICATION REGARDING LOBBYING** – Certification for Contracts, Grants, Loans, and Cooperative Agreements.

The undersigned Contractor certifies, to the best of its knowledge and belief, that:

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 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.

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 employees of Congress, or employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement, the undersigned shall also complete and submit Standard Form – LLL, “Disclosure Form of Lobbying Activities,” in accordance with its instructions.

The undersigned shall require that language of this certification be included in the documents for all subcontracts at all tiers (including subcontracts, sub-grants and contracts under grants, loans and cooperative agreements) and that all sub-recipients and contractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed by 31 U.S.C. 1352. 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.

C. NON DISCRIMINATION & EQUAL OPPORTUNITY ASSURANCE (29 CFR PART 37 AND 45 CFR PART 80).

As a condition of the Contract, Contractor assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

1. Section 188 of the Workforce Investment Act of 1998 (WIA), (Pub. L. 105-220), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex national origin, age, disability, political affiliation, or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I-financially assisted program or activity;
2. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 CFR Part 80), to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department.
3. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112) as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 CFR Part 84), to the end that, in accordance with Section 504 of that Act, and the Regulation, no otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department.
4. The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 CFR Part 91), to the end that, in accordance with the Act and the Regulation, no person in the United States

shall, on the basis of age, be denied the benefits of, be excluded from participation in, or be subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department.

5. Title IX of the Educational Amendments of 1972 (Pub. L. 92-318), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 CFR Part 86), to the end that, in accordance with Title IX and the Regulation, no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any education program or activity for which the Applicant receives Federal financial assistance from the Department.
6. The American with Disabilities Act of 1990 (Pub. L. 101-336), prohibits discrimination in all employment practices, including, job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment. It applies to recruitment, advertising, tenure, layoff, leave, fringe benefits, and all other employment-related activities, and;

Contractor also assures that it will comply with 29 CFR Part 38 and all other regulations implementing the laws listed above. This assurance applies to Contractor's operation of the WIA Title I – financially assisted program or activity, and to all agreements Contractor makes to carry out the WIA Title I – financially assisted program or activity. Contractor understands that Commerce and the United States have the right to seek judicial enforcement of the assurance.

D. CERTIFICATION REGARDING PUBLIC ENTITY CRIMES, SECTION 287.133, F.S.

Contractor hereby certifies that neither it, nor any person or affiliate of Contractor, has been convicted of a Public Entity Crime as defined in section 287.133, F.S., nor placed on the convicted vendor list.

Contractor understands and agrees that it is required to inform Commerce immediately upon any change of circumstances regarding this status.

E. ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW (ACORN) FUNDING RESTRICTIONS ASSURANCE (Pub. L. 111-117).

As a condition of the Contract, Contractor assures that it will comply fully with the federal funding restrictions pertaining to ACORN and its subsidiaries per the Consolidated Appropriations Act, 2010, Division E, Section 511 (Pub. L. 111-117). The Continuing Appropriations Act, 2011, Sections 101 and 103 (Pub. L. 111-242), provides that appropriations made under Pub. L. 111-117 are available under the conditions provided by Pub. L. 111-117.

The undersigned shall require that language of this assurance be included in the documents for all subcontracts at all tiers (including subcontracts, sub-grants and contracts under grants, loans and cooperative agreements) and that all Recipient and/or Subrecipients and contractors shall provide this assurance accordingly.

F. SCRUTINIZED COMPANIES LISTS CERTIFICATION, SECTION 287.135, F.S.

If this Contract is in the amount of \$1 million or more, in accordance with the requirements of section 287.135, F.S., Contractor hereby certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Both lists are created pursuant to section 215.473, F.S.

Contractor understands that pursuant to section 287.135, F.S., the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs.

If Contractor is unable to certify to any of the statements in this certification, Contractor shall attach an explanation to this Contract.

By signing below, Contractor certifies the representations outlined in parts A through F above are true and correct.

(Signature and Title of Authorized Representative)

Contractor

Date

(Street)

(City, State, ZIP Code)

- End of Attachment 2 -