

## BLACK BUSINESS LOAN PROGRAM RECIPIENT AGREEMENT

This Black Business Loan Program Recipient Agreement (the "Agreement") (OTTED Agreement Number OT-xx-xxx), effective the last date signed below (the "Effective Date"), is made and entered into in the City of Tallahassee, Leon County, Florida, by and between the Executive Office of the Governor, Office of Tourism, Trade, and Economic Development ("OTTED"), an agency of the State of Florida located at 2001 The Capitol, 402 S. Monroe Street, Tallahassee, Florida 32399-0001, and \_\_\_\_\_ Corporation (GRANTEE) located at \_\_\_\_\_. OTTED and GRANTEE are sometimes hereinafter referred to as a "Party" and collectively as the "PARTIES."

WHEREAS, OTTED is authorized by law to make grants of funds in accordance with legislative appropriations; and

WHEREAS, the Florida Legislature has provided for such grants in section 288.7102, Florida Statutes, which establishes the Black Business Loan Program (the "Program") to further the purposes of the Florida Black Business Investment Act, sections 288.7065 to 288.714, Florida Statutes (the "Act"); and

WHEREAS, pursuant to Rule 27M-3.003, Fla. Admin. Code, OTTED has certified GRANTEE as a recipient of Program funds; and

WHEREAS, the Parties desire to enter into this Agreement to set forth conditions for award of the Program funds and to define their mutual responsibilities.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, the PARTIES agree as follows.

**Section 1. Award of Funds.** OTTED hereby awards GRANTEE Program funds in the total amount of \_\_\_\_\_, (the "Funds"). The Funds will be made available to the GRANTEE by the release of Funds and advance authority available to OTTED. Advance payment of Funds will be subject to any special conditions stipulated by the Department of Financial Services. GRANTEE shall deposit and invest the Funds in a separate interest bearing account until totally expended for the purposes provided.

**Section 2. Scope of Work.** GRANTEE shall use the Funds consistent with the purposes of the Program and the Act, as outlined in the business plan attached hereto as Exhibit A.

**Section 3. Term.** The term of this Agreement shall begin on the Effective Date and continue for a period of three years thereafter, unless terminated earlier or renewed for a longer period. Section 288.7102(4), Florida Statutes, provides that an entity may not receive funds under the Act unless the entity meets annual certification requirements. GRANTEE shall seek certification annually, but it may disburse the Funds during the term of this Agreement rather than on an annual cycle. During the term of

this Agreement, the Parties may document future certifications and allocations of funds by amending the Agreement, rather than by executing a separate agreement.

**Section 4. Agreement Managers.** The Parties each hereby appoint an Agreement Manager to facilitate the terms of this Agreement. All written approvals referenced in this Agreement must be obtained from the respective Party's Agreement Manager, and all notices and other reporting requirements shall be delivered to them. OTTED's Agreement Manager is Mary Helen Blakeslee, who may be reached at telephone number (850) 487-2568, facsimile number (850) 487-3014, and electronic mail address maryhelen.blakeslee@eog.myflorida.com. GRANTEE's Agreement Manager is+ \_\_\_\_\_, who may be reached at telephone number \_\_\_\_-\_\_\_\_-\_\_\_\_, facsimile number \_\_\_\_-\_\_\_\_-\_\_\_\_, and electronic mail address \_\_\_\_\_. Either Party may change its Agreement Manager at any time without amendment of this Agreement by notifying the other Party in writing.

**Section 5. Reporting Requirements.** Within twenty (20) days after the end of each quarter, beginning with the quarter ending \_\_\_\_\_, 20xx, GRANTEE shall provide to OTTED a written status report of Program activities and disbursement of Funds, as outlined below. At the end of the term of this Agreement, in lieu of a quarterly report GRANTEE shall submit a final report summarizing activity throughout the entire term, which shall be due within sixty (60) days after the end of the term. GRANTEE shall also report the results of annual partner satisfaction surveys, which the Parties shall jointly develop.

**(A)** The report of Program activities shall include:

1. A description of all outreach activities participated in or conducted during the reporting period, including discussion and documentation of results achieved.
2. A description of all technical assistance provided during the reporting period, including discussion and documentation of results achieved.

**(B)** The report of disbursement of Funds shall include:

1. The Funds transferred to GRANTEE by OTTED, during the quarter and total to date.
2. The interest earned on the investment of the Funds, during the quarter and total to date.
3. A description of each loan or investment made, or loan guarantee extended, using the Funds during the quarter, including a description of the transaction's structure and other parties' participation in the loan guarantee or investment syndication.
4. Current information about the company benefiting from any transaction during the quarter, including, at a minimum, the name and address of the borrower or investee, the type of business activity and NAICS code, the number of jobs created or retained, and the company's annual payroll.

5. The status of each loan, loan guarantee, or investment made to date (until such time as the loan is paid back in full, or the loan guarantee has expired or been terminated, or the investment is repaid or returned), including the outstanding amount and the status of payment arrangements.

6. A certification that no employee or member of the Black Business Investment Board or OTTED, and no elected official, owns, directly or indirectly, an interest of five percent (5%) or more in any company that will benefit from any Funds provided by GRANTEE.

**Section 6. Performance Conditions.** GRANTEE shall meet the following performance conditions, or be responsible for the associated sanction. These conditions are not an exhaustive list of GRANTEE’s material obligations under the Agreement. OTTED may demand payment of sanctions by GRANTEE during the quarter following failure to meet any condition, or, at its sole election, OTTED may deduct sanctions from future releases of the Funds under this Agreement or from allocations of Program funds in future years.

Condition	Measure/Target	Sanction
Timely and complete satisfaction of reporting requirements specified in Section 4	Complete report submitted within twenty (20) days after end of each quarter, except for final report which is due within sixty (60) days	\$10 per day for each day late
Satisfaction of GRANTEE’s partners (identified in application) with GRANTEE’s performance of Program activities	90% of GRANTEE’s partners report “satisfied” (or 3 on a scale of 1 to 5, not including n/a) in response to annual survey developed jointly by GRANTEE and OTTED	\$1,000 for failure to develop and conduct partner satisfaction survey  \$10 for each percentage point below 90%
Expansion of partnership activity beyond GRANTEE’s current partners (identified in application)	Expand partner base by one (1) new partner annually	\$100 for failure to add new partner(s)
Number of outreach/marketing events participated in or conducted	One (1) event per quarter	\$100 for failure to participate in or conduct event
Number of instances of providing technical assistance	Four (4) instances per quarter	\$100 per each instance less than four (4)

### **Section 7. Subagreements.**

(A) GRANTEE shall be responsible for all work performed and all expenses incurred in connection with the development and implementation of the services, programs, and activities under this Agreement.

(B) GRANTEE may, as appropriate and in compliance with applicable law, subcontract the performance of the services set forth in this Agreement, including entering into subcontracts or other subordinate relationships with vendors for services and commodities, provided that such subcontract has been approved in writing by OTTED prior to its execution, and with the understanding that GRANTEE shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract. GRANTEE shall not enter into subcontracts in which OTTED could be held liable to a subcontractor for any expenses or liabilities. GRANTEE shall defend and hold OTTED harmless of any liabilities incurred under any of the subcontracts entered into by GRANTEE.

(C) Any and all subcontracts or other subordinate relationships that GRANTEE enters into with respect to this Agreement shall include provisions requiring the subordinate party to owe to GRANTEE the same duties and obligations that GRANTEE owes to OTTED under this Agreement, including but not limited to reporting requirements, accounting requirements, audit provisions, and the obligation to comply with all applicable local, state, and federal laws.

(D) If GRANTEE uses subcontractors or sub-vendors under this Agreement, it is encouraged to use small businesses, including minority and women-owned businesses. The directory of certified minority and women-owned businesses can be accessed from the website of the Florida Department of Management Services, Office of Supplier Diversity ([www.dms.myflorida.com](http://www.dms.myflorida.com)). GRANTEE shall report on a quarterly basis its expenditures with minority and women-owned businesses. The report shall contain the names and addresses of the minority and women-owned businesses; the aggregate dollar figure disbursed that quarter for each business; the time period; type of goods or services; and the applicable code. If no expenditures were made to minority or women-owned businesses, GRANTEE shall submit a statement to this effect.

### **Section 8. Audit Requirements.**

(A) This Agreement is subject to, and GRANTEE shall comply with, the Florida Single Audit Act, section 215.97, Florida Statutes, which is described in more detail in Exhibit B attached hereto.

(B) GRANTEE shall retain and maintain all records and make such records available for an audit as may be requested. Records shall include independent auditor working papers, books, documents, and other evidence, including but not limited to, vouchers, bills, invoices, requests for payment, and other supporting documentation, which according to generally accepted accounting principles, procedures and practices, sufficiently and properly reflect all loan actions and expenditures made in the performance of this Agreement. The records shall be subject at all times to inspection, review, or audit by state personnel of the Office of the Auditor General, the Chief Financial Officer, Office

of the Chief Inspector General, or other state personnel authorized by OTTED and copies of the records shall be delivered to OTTED upon request.

(C) GRANTEE shall include the audit and record keeping requirements described above and in Exhibit B in all subcontracts, assignments, and/or “pass-through” agreements with sub-recipients of the Funds. For purposes of this Agreement, “sub-recipient” shall be defined in accordance with section 215.97(2)(v), Florida Statutes.

(D) GRANTEE shall maintain financial records related to the Funds paid by GRANTEE to any parties for work on the matters that are the subject of this Agreement as required by law. GRANTEE shall submit a written independent audit report to OTTED specifically covering the period of contract expenditures pursuant to Sections 215.97 and 11.45, Florida Statutes, and other relevant laws.

(E) GRANTEE shall provide copies of any audit referencing this Agreement, the audit transmittal letter, and any response to such audit to OTTED within thirty (30) days of receipt by GRANTEE.

#### **Section 9. Access to Records.**

(A) OTTED may perform on-site reviews to independently validate any information or reports submitted to OTTED. GRANTEE shall allow OTTED’s Agreement Manager and other OTTED authorized personnel access to any information and any other documents requested by OTTED for purposes of monitoring GRANTEE’s performance.

(B) GRANTEE shall, subject to the provisions of Chapter 119, Florida statutes, Sections 288.1067, 288.047, 288.075, 288.9520, and 288.99, Florida Statutes, and other relevant laws, permit public access to all documents or other materials prepared, developed or received by it in connection with the performance of its obligations or the exercise of its rights under this Agreement. This Agreement may be terminated by OTTED if GRANTEE fails to allow such public access.

(C) OTTED’s Agreement Manager, or designee, may with reasonable notice, perform on-site reviews to independently validate any information or reports submitted, or to be submitted, to OTTED. GRANTEE shall allow OTTED’s Agreement Manager and other OTTED-authorized personnel reasonable access to any information and any other documents requested by OTTED for purposes of monitoring GRANTEE’s performance.

**Section 10. Compliance with Laws.** In performing any act or service in connection with this Agreement, GRANTEE shall strictly comply with all local, state, and federal laws and regulations. Failure to do so shall be grounds for terminating the Agreement.

#### **Section 11. Remedies for Breach of Agreement.**

(A) In the event that GRANTEE fails to comply with any of the terms of this Agreement, OTTED may exercise any remedies available at law or in equity, including, without limitation the right to (i)

impose penalties and sanctions, (ii) withhold and/or reduce funding to GRANTEE, and (iii) terminate this Agreement in accordance with the terms hereof.

**(B)** Notwithstanding anything contained herein, in the event that GRANTEE defaults in the performance of any duty, obligation, covenant, or agreement imposed on it or made by it in the Agreement or by law, then OTTED may provide a notice of the default to GRANTEE. Unless OTTED determines that the default needs to be cured immediately, GRANTEE will have fifteen (15) calendar days following the date of the notice within which to initiate action to correct the default. In the event OTTED has not determined that the default needs to be cured earlier, GRANTEE shall have thirty (30) calendar days following the date of notice of default, either to cure the default, or to demonstrate to the satisfaction of OTTED that corrective action has been taken and will be likely to result in curing the breach within a period of time that OTTED agrees is reasonable. In the event that GRANTEE fails to cure the default (within the timeframe established above, whether immediately or otherwise) or make such demonstration to satisfaction of OTTED, OTTED may exercise any remedy available to it under the law or in equity, including, without limitation the right to terminate this Agreement immediately upon notice to GRANTEE.

**(C)** Subject to compensation due GRANTEE for any work satisfactorily completed prior to any notice of termination, following termination of this Agreement, all funds which as of that date were previously provided by OTTED and not expended by GRANTEE shall revert to the State of Florida General Revenue Fund. The requirement for the return or and method of repayment of any remaining funds shall be at the sole discretion of OTTED. Further, OTTED may recover the Funds awarded to GRANTEE by payment of the amount from GRANTEE in total, or, if all of the Funds have been disbursed, by collection of loan payments or investment returns as the loans or investments mature (that is, OTTED and not GRANTEE shall be entitled to collect the receivables, subject to any rights of others).

**Section 12. Attorney's Fees.** OTTED shall not be liable to pay GRANTEE any attorney fees, interest, or costs of collection.

**Section 13. General Conditions.** The following State of Florida General Contract Conditions, contained in form PUR 1000 (10/06) promulgated under Rule 60A-1.002, Fla. Admin. Code, are hereby incorporated by reference into and made part of this Agreement, as set forth on Exhibit C attached hereto. General conditions references to "Customer" shall be deemed to refer to OTTED, references to "Contractor" shall be deemed to refer to GRANTEE, and references to "product" shall be deemed to refer to services. In the event of any conflict or inconsistency between any general condition and any other term of this Agreement or the Act, the latter shall prevail.

- (A)** 7. Inspection at Contractor's Site.
- (B)** 10. Literature.
- (C)** 16. Taxes.

- (D) 17. Governmental Restrictions.
- (E) 18. Lobbying and Integrity.
- (F) 19. Indemnification.
- (G) 20. Limitation of Liability.
- (H) 21. Suspension of Work.
- (I) 22. Termination for Convenience.
- (J) 26. Renewal.
- (K) 28. Advertising.
- (L) 29. Assignment.
- (M) 31. Dispute Resolution.
- (N) 32. Employees, Subcontractors, and Agents.
- (O) 33. Security and Confidentiality.
- (P) 34. Contractor Employees, Subcontractors, and Agents.
- (Q) 35. Insurance Requirements.
- (R) 36. Warranty of Authority.
- (S) 37. Warranty of Ability to Perform.
- (T) 42. Modification of Terms.
- (U) 44. Waiver.
- (V) 45. Annual Appropriations.
- (W) 46. Execution in Counterparts.
- (X) 47. Severability.

**Section 14. Entire Agreement.** This Agreement, including the attached Exhibits A, B, and C, constitutes a complete and exclusive statement of the terms and conditions of the Agreement and supersedes and replaces any and all prior negotiations, understandings and agreements, whether oral or written, between the Parties with respect thereto. Except as expressly provided in this Agreement, no term, condition, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the provisions of this Agreement shall be effective or binding upon the Parties unless agreed to in writing by the Party against whom enforcement is sought.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

**OTTED:**

**STATE OF FLORIDA EXECUTIVE OFFICE OF THE  
GOVERNOR OFFICE OF TOURISM, TRADE, AND  
ECONOMIC DEVELOPMENT**

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By: Dale A. Brill, Ph.D., Director

DATE: \_\_\_\_\_

\_\_\_\_\_  
WITNESS

**GRANTEE:**

\_\_\_\_\_  
By: Name, Title

\_\_\_\_\_  
WITNESS

DATE: \_\_\_\_\_

**EXHIBIT A – BUSINESS PLAN**

## EXHIBIT B - SPECIAL AUDIT REQUIREMENTS

The administration of funds awarded by OTTED to GRANTEE may be subject to audits and/or monitoring by OTTED, as described in this section.

### MONITORING

By entering into the Agreement, GRANTEE agrees to comply and cooperate with any monitoring procedures and processes deemed appropriate by OTTED. In the event OTTED determines that a limited scope audit of the recipient is appropriate, GRANTEE agrees to comply with any additional instructions provided by OTTED to GRANTEE regarding such audit. GRANTEE further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer, Auditor General, or Chief Inspector General. GRANTEE shall permit access to GRANTEE's records and independent auditor's working papers as necessary to comply with the requirements of this Agreement.

### AUDITS

1. In the event that GRANTEE expends a total amount of State awards (i.e., State financial assistance provided to the recipient to carry out a State project) equal to or in excess of \$500,000 in any fiscal year of GRANTEE, GRANTEE must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes (the Single Audit Act); applicable rules of the Executive Office of the Governor and the Chief Financial Officer, and Chapter 10.650, Rules of the Auditor General. In determining the State financial assistance expended in its fiscal year, GRANTEE shall consider all sources of State awards, including State funds received from OTTED, except that State financial assistance received by a nonstate entity for Federal program matching requirements shall be excluded from consideration.
2. In connection with the audit requirements, GRANTEE shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a reporting package as defined by Section 215.97(2)(d), Florida Statutes, and Chapter 10.650, Rules of the Auditor General.
3. If GRANTEE expends less than \$500,000 in State financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that GRANTEE expends less than \$500,000 in State financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from non-State funds (i.e., the cost of such an audit must be paid from GRANTEE funds obtained from other than State entities).
4. GRANTEE must include the record keeping requirements found herein in subrecipient contracts and subcontracts entered into by GRANTEE for work required under terms of this Agreement. In the executed subcontract, GRANTEE shall provide each subrecipient of state financial assistance the information needed by the subrecipient to comply with the requirements of the Single Audit Act. Pursuant to Section 215.97(6), Florida Statutes, GRANTEE shall review and monitor subrecipient audit reports and perform other procedures as specified in the agreement with the subrecipient, which may include onsite visits. GRANTEE shall require subrecipients, as a condition of receiving state financial assistance, to permit the independent auditor of the recipient, the state awarding agency, the Chief Financial Officer, the Chief Inspector General, and the Auditor General access to the subrecipient's records and independent auditor's working papers as necessary to comply with the requirements of the Single Audit Act.
5. For information regarding the Florida Single Audit Act, including the Florida Catalog of State Financial Assistance (CFSA), GRANTEE should access the website for the Governor's Office located at <http://www.flgov.com/> for assistance. In addition to the above website, the following websites may be accessed for information: Legislature's Website <http://www.leg.state.fl.us/>, the

Department of Banking and Finance's Website <http://www.dbf.state.fl.us/aadir/FSAAIndex.html>,  
and the Auditor General's Website <http://sun6.dms.state.fl.us/audgen>.

### **REPORT SUBMISSION**

Copies of audit reports conducted in accordance with the audit requirements contained herein shall be submitted to the parties set out below. The annual financial audit report shall include all management letters and GRANTEE's response to all findings, including corrective actions to be taken. The annual financial audit report shall include a schedule of financial assistance specifically identifying all Agreement and other revenue by sponsoring agency and Agreement number.

The complete financial audit report, including all items specified above, shall be sent directly to:

Mary Helen Blakeslee  
Office of Tourism, Trade, and Economic Development  
The Capitol, Suite 2001  
Tallahassee, Florida 32399 -0001

**and**

State of Florida Auditor General  
Attn: Ted J. Sauerbeck  
Room 574, Claude Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32302-1450

### **RECORD RETENTION**

GRANTEE shall retain all records for a period of five (5) years from the date of submission of the final program report. GRANTEE shall also ensure that the audit working papers of its independent auditor are retained for a period of five (5) years from the date the audit report is issued, and are made available to OTTED or its designee, the Comptroller or Auditor General or Chief Inspector General. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the five (5) year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the five (5) year period, whichever is later.

## EXHIBIT C – STANDARD GENERAL CONTRACT CONDITIONS

### Standard Clause

- 7. Inspection at Contractor's Site.
- 10. Literature.
- 16. Taxes.
- 17. Governmental Restrictions.
- 18. Lobbying and Integrity.
- 19. Indemnification.
- 20. Limitation of Liability.
- 21. Suspension of Work.
- 22. Termination for Convenience.
- 26. Renewal.
- 28. Advertising.
- 29. Assignment.
- 31. Dispute Resolution.
- 32. Employees, Subcontractors, and Agents.
- 33. Security and Confidentiality.
- 34. Contractor Employees, Subcontractors, and Other Agents.
- 35. Insurance Requirements.
- 36. Warranty of Authority.
- 37. Warranty of Ability to Perform.
- 42. Modification of Terms.
- 44. Waiver.
- 45. Annual Appropriations.
- 46. Execution in Counterparts.
- 47. Severability.

**7. Inspection at Contractor's Site.** The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.

**10. Literature.** Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.

**16. Taxes.** The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. Any exceptions to this paragraph shall be explicitly noted by the Customer in the special contract conditions section of the solicitation or in the Contract or purchase order.

**17. Governmental Restrictions.** If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Customer.

**18. Lobbying and Integrity.** Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts,

meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three 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: <http://dhis.dos.state.fl.us/barm/genschedules/gensched.htm>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

**19. Indemnification.** The 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 Customers, 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 the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or a Customer.

Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Customers 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 a Customer's misuse or modification of Contractor's products or a Customer'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 the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the Contractor shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The customer shall not be liable for any royalties.

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

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

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

lost institutional operating savings. The State and Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

**21. Suspension of Work.** The Customer may in its sole discretion suspend any or all activities under the Contract or purchase order, at any time, when in the best interests of the State to do so. The Customer shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the Customer shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract or purchase order. Suspension of work shall not entitle the Contractor to any additional compensation.

**22. Termination for Convenience.** The Customer, by written notice to the Contractor, may terminate the Contract in whole or in part when the Customer determines in its sole discretion that it is in the State's interest to do so. The 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. The Contractor shall not be entitled to recover any cancellation charges or lost profits.

**26. Renewal.** Upon mutual agreement, the Customer and the Contractor may renew the Contract, in whole or in part, for a period that may not exceed 3 years or the term of the contract, whichever period is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.

**28. Advertising.** Subject to Chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Customer or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the State or the Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

**29. Assignment.** The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Customer. In the event of any assignment, the Contractor remains secondarily liable for performance of the contract, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written notice to Contractor of its intent to do so.

**31. Dispute Resolution.** Any dispute concerning performance of the Contract shall be decided by the Customer's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, the Contractor files with the Customer a petition for administrative hearing. The Customer's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.

Without limiting the foregoing, 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, Florida law shall apply and the parties waive any right to jury trial.

**32. Employees, Subcontractors, and Agents.** 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 security and administrative requirements of the Customer and shall comply with all controlling laws and regulations relevant to the services they are providing under the Contract. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

**33. Security and Confidentiality.** The Contractor shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the 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 Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

**34. Contractor Employees, Subcontractors, and Other Agents.** The Customer and the State shall take all actions necessary to ensure that Contractor's employees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.

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

**36. Warranty of Authority.** Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

**37. Warranty of Ability to Perform.** The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.

**42. Modification of Terms.** The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Customer and the Contractor. No oral agreements or representations shall be valid or binding upon the Customer or the Contractor. No alteration or modification of the Contract terms, including substitution of

product, shall be valid or binding against the Customer. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. The Customer's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

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

**45. Annual Appropriations.** The State's performance and obligation to pay under this contract are contingent upon an annual appropriation by the Legislature.

**46. Execution in Counterparts.** The 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.

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