

## PURCHASE ORDER / CONTRACT STANDARD TERMS AND CONDITIONS

*Offer/Acceptance. If this Purchase Order ("PO") refers to Supplier's bid or proposal, this PO is an ACCEPTANCE of Supplier's OFFER TO SELL in accordance with the terms and conditions of the "solicitation" identified in Supplier's bid or proposal. The solicitation includes Invitation to Bid ("TB"), Invitation to Negotiate ("TN"), or any other form of order by Florida State University (FSU). If a bid or proposal is not referenced, this PO is an OFFER TO BUY, subject to Supplier's acceptance, demonstrated by Supplier's performance or written acceptance of this PO. Any COUNTER-OFFER TO SELL automatically CANCELS this PO, unless a change order is issued by FSU accepting a counter-offer. This PO shall supersede and control over any Supplier form(s) or part(s) thereof included in or attached to any bid, proposal, offer, acknowledgment, or otherwise, in the event of inconsistencies or contradictions, regardless of any statement to the contrary in such form(s) or parts thereof. NOTE: Contract also means any agreement or PO for the purchase or disposal of commodities or services. To the extent any terms of the Contract and PO are in conflict, the terms of the Contract supersede the terms of the PO.*

**CERTIFICATION:** *Acceptance of this order serves as certification that the Supplier or its principals: (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; (b) have not within a three-year period preceding this PO been convicted of 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 PO 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; (c) are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offense enumerated in paragraph (b) of this certification; (d) have not within a three-year period preceding this application/PO had one or more public transactions (federal, state or local) terminated for cause or default; and (e) are not employed and/or affiliated with FSU, unless a current Report of Specified Interest form has been approved.*

**Assignment.** Supplier may not assign or subcontract all or any portion of this PO and any monies which may become due hereunder without the advance written consent of FSU, which may not be unreasonably withheld.

**Changes.** FSU may unilaterally require, by written order, changes altering, adding to, or deducting from the PO specifications, provided that such changes are within the general scope of the PO. FSU may make an equitable adjustment in the PO price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require written consent of FSU and Supplier, which shall not be unreasonably withheld. If unusual quantity requirement arise, FSU may solicit separate solicitations to satisfy them.

**Compliance with Laws.** Supplier agrees that it shall, at all times during performance of services under this PO, and at its own expense, a) comply with all federal, state and local laws, rules, regulations, and ordinances, and all other governmental regulations as applicable and required within Supplier's industry standard, as well as all applicable FSU policy and regulations; and b) have all applicable governmental permits, licenses, consents, and approvals necessary to perform its obligations under this PO.

**Confidentiality of Information, Non-Disclosure.** Each party acknowledges that its employees may, in the performance of the PO come into possession of proprietary or confidential information owned by or in the possession of the other. Neither party will use any such information for its own benefit or make such information available to any person, firm, corporation, or other organizations, whether or not directly or indirectly affiliated with either party unless required by law. If Supplier is exposed to FSU's confidential information, Supplier will keep such information confidential and will act in accordance with any guidelines and applicable laws (such as FERPA and the Gramm-Leach Bliley Act). Confidential information shall not include information that is public record pursuant to Florida law (Florida Statutes Chapter 119), and FSU will respond to public records requests without any duty to give Supplier prior notice. This provision shall survive termination of the PO. If Supplier is providing software, FSU may create and return a copy of the software and related documentation for back up and disaster recovery purposes, and for archival purposes for use after the PO is terminated or expires.

**Copyright, Patents and Royalties.** The Supplier, without exception, shall indemnify and save harmless Florida State University and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of this PO, including its use by FSU. If the Supplier uses any design, device, or materials covered by letters, patent, trademark, copyright or other intellectual property right or other right, it is mutually agreed and understood without exception that the PO pricing shall include all royalties or cost arising from the use of such design, device or materials in any way involved in the work. Supplier also shall indemnify and hold harmless FSU and the FSU Board of Trustees and FSU's officers, employees, agents and/or servants from and against any and all liabilities, actions, damages, suits, proceedings and judgments from claims instituted or recovered against FSU by any person or persons whomsoever on account of FSU's use or sale of such article in violation of rights under such patent, copyright, trademark, other intellectual property right or other right.

**Delivery.** Delivery is to be made to the "Ship To" location shown on the face of the PO. Supplier will ship goods FOB Destination unless otherwise indicated on the PO. Delivery shall be within the normal working hours of FSU, Monday through Friday, unless otherwise specified. Delivery due date will be indicated on the face of the PO or within the PO. Failure to make delivery by or before "Delivery Due Date" constitutes cause for cancellation by FSU. Supplier must include the PO number on all invoices, Bills of Lading, cases, bundles, packing lists and correspondence. Supplier shall include a packing list showing contents of shipment if shipment is made in two or more

containers. No boxing, packing, installation, assembly, or similar charges (not included in the item price) will be allowed unless expressly and specifically authorized in writing by FSU as a change order to the PO or amendment to the PO. The risk of loss or damage to leased equipment, goods, or property shall not transfer to FSU except as expressly provided in Florida Statutes Section 680.219. **Note:** Signature by FSU personnel for deliveries does not confirm either a complete or accurate shipment. Incomplete and or incorrect shipments not complying with the requirements of the PO must be re-delivered at the Supplier's expense.

**Direct Expenses.** If FSU agrees to directly reimburse Supplier for travel, meals, lodging, and/or other expenses under this PO, such expenses must be documented. Documentation must be submitted with Supplier invoices, unless otherwise directed. All such expenses must be paid in accordance with §112.061, Florida Statutes, and FSU policy and regulation. Any non-documented expenses, and/or expenses incurred outside the method and/or in excess of the amounts prescribed by Florida law or FSU policy and regulation, will be borne by Supplier.

**Emergency Support.** It is hereby made a part of this Contract that before, during and after a public emergency, disaster, hurricane, flood, or other acts of God, that Florida State University (FSU) and the State University System (SUS) shall be provided goods and services on a first priority basis. It is vital and imperative that the students, faculty and staff are protected from any emergency, which threatens public health and safety.

Awarded Contractor agrees to provide, rent, sell, lease all goods and services required by Florida State University and the State University System (SUS) on a first priority basis. FSU and the SUS expects to pay a fair and reasonable price for all goods and services in the event of a disaster, emergency, or hurricane, if not otherwise listed in your proposal. Awarded Contractor shall furnish a twenty-four (24) hour phone number in the event of such an emergency.

**Employment of Unauthorized Aliens.** The employment of unauthorized aliens by any supplier is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the supplier knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this PO.

**Equal Opportunity.** Florida State University is an equal opportunity employer and federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.S(a) and 41 CFR 60-741.S(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or physical or mental disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.

**This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), (or for construction contractors, 41 CFR § 60-4.3(a)), 60-300.S(a) and 60-741.S(a), and Executive Order 11246, as amended. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to the aforementioned protected groups.**

**EULA.** In the absence of a separately written and executed contract between the parties, this PO represents the entire agreement between FSU (including FSU's employees and other identified end users) and the Supplier. In the event that Supplier subsequently attempts to enter into terms of use agreements or other similar agreements, policies or understandings, whether on the Supplier's purchase order, website, click-through, verbal or in writing, with FSU's employees or other end users, such agreements shall be null, void and without effect, and the terms of this PO shall apply. FSU will not be bound to any other terms and conditions set forth in any documents, agreements or policies unless such terms and conditions are executed in writing by an authorized signatory of the FSU.

**Export Control.** The parties shall comply with all applicable U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799 and/or other restrictions imposed by the Treasury Department's Office of Foreign Asset Controls (OFAC), in the performance of this PO/PO. The parties agree that no technology, related data or information will be exchanged or disseminated under this PO nor any collaborations conducted pursuant to this PO, which are export controlled pursuant to the export control laws of the United States, including the EAR and the ITAR and any other applicable regulations. The Parties agree that the Supplier will not provide FSU with any ITAR or EAR restricted technology and/or related data, and that any ITAR or EAR restricted technologies and/or data produced in furtherance of this PO will be in the exclusive possession of the Supplier and at no time will any export controlled technologies, related data, or information be intentionally or inadvertently transferred to FSU, its facilities, labs, staff, researchers, employees, officers, agents, servants or students in the performance of this PO. If the Supplier wishes to disclose export controlled technology or technical data to FSU, the Supplier will, prior to disclosing any information, technical data or source code that is subject to export controls under federal law, notify FSU in writing that the material is export controlled and shall identify the controls that apply. FSU shall have the right to decline or limit (a) the receipt of such information, and (b) any task requiring receipt of such information. In the event the Supplier sends any such technical data or product that is subject to export control, without notice of the applicability of such

export control, FSU has the right to immediately terminate this PO. The Supplier understands and agrees that to the extent the Supplier's personnel have access to work or materials subject to U.S. export controls while on FSU property, such personnel will meet all federal export control regulatory requirements or have the appropriate U. S. government approval.

**Extra Charges.** No additional charges of any kind, including charges for boxing, packing, transportation or other extras will be allowed unless specifically agreed to in advance and in writing by FSU Procurement Services.

**Facilities.** FSU reserves the right to inspect the Supplier's facilities during normal business hours with prior notice.

**False Claims.** Supplier represents and agrees that information submitted in support of its requests for payment is the basis of payment and is true and accurate to the best of knowledge of the responsible signatory. A violation of this provision shall subject the Supplier to the provisions of Sec. 68.082, F.S., pertaining to false claims against the State, and/or Sec. 837.06, F.S., pertaining to false official statements.

**Family Educational Rights and Privacy Act (FERPA) Compliance.**

Definition: Covered Data and Information (CDI) includes paper and electronic student education record information supplied by FSU, as well as any data provided by FSU students, to Supplier.

Supplier is an agent of FSU as a "school official with a legitimate educational interest" for the purpose of rendering the service described in the PO, and shall comply with the applicable provisions of the Family Educational Rights and Privacy Act of 1974, 20USC 1232(g); and its implementing regulations at 34 CFR Part 99, otherwise known as FERPA or the Buckley Amendment, as to covered data and information (CDI).

Supplier and its officers, employees and agents may only use information received from FSU for the purposes for which the disclosure is made. Supplier agrees to hold CDI in strict confidence. Supplier shall not use or disclose CDI received from or on behalf of Institution (or its students) except as permitted or required by the PO, as required by law, or as otherwise authorized in writing by FSU. Supplier agrees not to use CDI for any purpose other than the purpose for which the disclosure was made.

**Return or Destruction of CDI:** Upon termination, cancellation, expiration or other conclusion of the PO, Supplier shall return all CDI to FSU or, if return is not feasible, destroy any and all CDI. If Supplier destroys the information, the Supplier shall provide FSU with a certificate confirming the date of destruction of the data.

**Remedies:** If FSU reasonably determines in good faith that Supplier has materially breached any of its obligations under this PO, FSU, in its sole discretion, shall have the right to require Supplier to submit a plan of monitoring and reporting; provide Supplier with a fifteen (15) day period to cure the breach; or terminate the PO immediately if cure is not possible. Before exercising any of these options; FSU shall provide written notice to Supplier describing the violation and the action it intends to take. If the Family Policy Compliance Office of the U.S. Department of Education determines that the Supplier improperly disclosed personally identifiable information obtained from FSU's education records, FSU may not allow the Supplier access to education records for at least five years.

**Data and Security Standards.** Contractor agrees that it shall protect the data it receives from or on behalf of FSU at all times in accordance with standards prescribed within FSU's Information Security and Privacy Standard Terms and Conditions at <https://fla.st/ITS-ISPO-Addendum>.

**Force Majeure.** No default, delay, or failure to perform on the part of Supplier or FSU shall be considered a default, delay or failure to perform otherwise chargeable hereunder, if such default, delay or failure to perform is due to causes beyond either party's reasonable control including, but not limited to: strikes, lockouts, or inactions of governmental authorities, pandemic/epidemic, war, embargoes, fire, earthquake, floods acts of God, or default of common carrier. In the event of such default, delay or failure to perform, any date or times by which either party is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the excused default, delay or failure to perform.

**Furnish and Install.** For items that require installation, items specified in the PO should be provided on a furnished and installed basis. The Supplier shall have the complete responsibility for the items or system until it is in place and working. Any special installation preparation and requirements must be submitted to FSU. All transportation and coordination arrangement will be the responsibility of the Supplier. Delivery of equipment will be coordinated so that items or systems will be delivered directly to the installation site. This effort will minimize risk of damage and avoid double handling.

**Governmental Restrictions.** In the event any governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship or performance of the items provided on this PO prior to delivery, it shall be the responsibility of the Supplier to notify FSU at once, indicating the specific regulation which required an alteration. FSU reserves the right to accept any such alteration or to cancel the PO at no expense to FSU.

**Governing Law and Venue.** The PO shall be governed by the jurisdiction of the laws of the State of Florida, and venue for purposes of any action brought to enforce or construe the PO shall lie in Leon County, Florida. Any provision in conflict herewith, shall be void and of no effect.

**Hold Harmless, Indemnification.** (1) Each party agrees to be solely responsible for the negligent or wrongful acts of its employees, agents and representatives arising out of that party's respective tasks and duties that are the subject of the PO and the Supplier will hold harmless from and indemnify FSU and its Board of Trustees, its officers, agents and employees from any and all claims, suits, actions, proceedings, loss, costs, and damage of every kind and description, including attorney's fees and/or litigation expenses which may be brought or made against or incurred on account of loss or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in whole or in part by reason of any act, omission, professional error, fault, mistake, or negligence of Supplier, its employees, agents, representatives, or subcontractors, their employees, agents or representatives in connection with or incident to the performance or nonperformance of any term or provision contained in the PO. Supplier's obligation under this provision shall not extend to any liability caused by the sole negligence of the FSU Board of Trustees, FSU, or its officers, agents, and employees. Nothing contained herein should be construed as a waiver by FSU of any defense available to it.

This recognition by the parties is intended to be consistent with the State's waiver of sovereign immunity pursuant to Section 768.28, Florida Statutes and the Florida Supreme Court's decision in Florida Department of Natural Resources v. Garcia, 753 So.2d 72, 77-78(Fla. 2000), and does not alter such waiver, waive any lawful defense, or extend liability of either party beyond the provisions established in Section 768.28, Florida Statutes. (2) No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. (3) The parties agree that FSU is an agency of the State of Florida, and is thereby covered by state risk management/self-insurance program(s) pursuant to Florida law and subject to the limitations and partial waiver of sovereign immunity pursuant to Section 768.28, Florida Statutes, which provides, *inter alia*, a limited waiver of sovereign immunity by its agencies in the amount of \$200,000 per person and \$300,000 per occurrence for tort claims, and that without admission of liability, excess claims may be brought to the attention of the State Legislature for consideration of payment at the discretion of the Legislature. Further, the parties agree that the FSU cannot name another party as an additional insured because the State of Florida's sovereign immunity is not transferrable to another party. The parties agree that FSU's self-insurance coverage described above shall be deemed sufficient and acceptable in all respects whatsoever.

**Independent Audit.** FSU will have the right, at FSU's sole cost, to audit Supplier's financial records, including all books, accounts, reports, files and other records relating to the contract, either using its personnel or an independent third party pertaining to the contract. Such audit will be completed by FSU or its representatives at Supplier's office, on reasonable advance notice, and on dates and times mutually agreed to by the parties. If the audit reveals Supplier owes FSU money, Supplier will pay the amount due within thirty (30) days of the date we notify Supplier of the audit results. If the audit reveals FSU owes Supplier money, FSU will pay Supplier within thirty (30) days of the date the audit is complete.

**Florida Single Audit.** Where applicable, in the event that the recipient expends a total amount of state financial assistance equal to or exceeding \$750,000 in any fiscal year of such recipient, the recipient shall be required to have a state single or program-specific audit for such fiscal year in accordance with the requirements of Section 215.97, F.S. and the applicable rules of the Florida Department of Financial Services and the Florida Auditor General. The recipient shall, as a condition of receiving state financial assistance, allow the state awarding agency, the Department of Financial Services and the Auditor General access to the recipient's records and independent auditor's working papers as necessary for complying with Section 215.97, F.S.

**Federal Single Audit.** Where applicable, in the event that the recipient expends \$750,000 or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions and requirements of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards in accordance with the guidelines established in OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F.

**Independent Contractor.** Supplier shall perform its duties hereunder as an independent contractor and not as an employee. Neither supplier nor any agent or employee of supplier shall be deemed to be an agent or employee of FSU. Supplier and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through FSU and FSU shall not pay for or otherwise provide such coverage for supplier or any of its agents or employees. Supplier shall pay when due all applicable employment, income, and local taxes incurred pursuant to this PO. Supplier shall not have authorization, express or implied, to bind FSU to any agreement, liability or understanding, except as expressly set forth herein. Supplier shall (a) provide and keep in force worker's compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by FSU, and (c) be solely responsible for its acts and those of its employees and agents.

**Inspection, Acceptance and Title.** Inspection and acceptance will be at the destination location unless stipulated otherwise on the PO. FSU shall have the right to inspect the goods at delivery before accepting them. Title and risk of loss or damage to all items shall be the responsibility of the Supplier named on the PO until accepted by FSU, unless loss or damage results from negligence by FSU. The Supplier named on the PO shall be responsible for filing, processing and collecting all damage claims. However, to assist in the expeditious handling of damage claims. FSU will:(a) report any evidence of visible damage on all copies of the delivering carrier's Bill of Lading. (b) report damage (visible and concealed) to the carrier and PO supplier, confirming such reports in writing, within fifteen (15) days of delivery, requesting that the carrier inspect the damaged merchandise.

**Insurance.** Supplier and Supplier's subcontractors shall have and maintain types and amounts of insurance that at a minimum cover their exposure in performing this PO. FSU is self-insured, and will provide its Certificate of Insurance upon request; FSU is not required to

obtain additional insurance for this PO. Providing and maintaining adequate insurance coverage is a material obligation of the Supplier. Upon request, the Supplier shall provide a certificate of insurance. The limits of coverage under each policy maintained by the Supplier shall not be interpreted as limiting the Supplier's liability and obligations under the PO. All insurance policies shall be through insurers authorized to be eligible to write policies in Florida. Supplier shall comply with specific FSU insurance provisions as prescribed at <https://fla.st/O2VTCP60> unless stipulated otherwise within the PO or contract.

**Intellectual Property, Ownership of Works.** All reports, studies, plans, deliverables, strategies, materials, discoveries, inventions, processes, designs, plans, trade secrets, data, information, documents and other work (collectively, "Work"), whether of a technical nature or not, made, developed or obtained by Supplier pursuant to this PO or in connection with the provision of the Services shall be the sole and exclusive property of FSU and any copyrightable Work shall be deemed a "work made for hire" under the United States copyright laws. Should such Work not constitute a "work made for hire" under the United States copyright laws, Supplier hereby grants, transfers, assigns, and conveys to FSU and its successors and assigns, the entire right, title, and interest in the Work or any part thereof. Ownership rights shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the materials. Immediately upon termination of this PO for any reason, all Work, in whatever form, shall be turned over to FSU. This provision shall survive the termination of this PO.

**Invoicing and Payment.** All invoices shall include FSU's PO. Failure to properly mark invoices shall constitute breach of PO. Mere statements in lieu of approved invoices will not be accepted. All invoices must specifically describe the services and/or goods provided, the dates and hours that the services were rendered and/or goods delivered and the fee charged. At no time is a supplier authorized to submit a PO invoice directly to an individual or the ordering department. Except where stipulated otherwise on the PO, address all invoices to:

Mail: Florida State University Payables & Disbursement Services UCA 5607 University Center Tallahassee, FL  
32306-2391 Email: [CTL-Invoices@fsu.edu](mailto:CTL-Invoices@fsu.edu)

Invoices that do not correspond to the PO's specifications that are out of the ordinary or require contract interpretation should be referred to the appropriate Procurement Specialist in Procurement Services. Suppliers can facilitate prompt, accurate payment with the following components of an "ideal" invoice:

- Supplier name in header of invoice (a match for the PO name).
- Supplier remit to address.
- PO#, Supplier invoice# and invoice date
- Supplier's Federal Identification Number (FEID)
- Payment terms matching the PO payment terms
- Sufficient itemization to know what goods / services were provided
- Billing name: Florida State University
- Billing amount

At FSU's option, Supplier may be required to invoice electronically pursuant to guidelines established by FSU. All payments made by FSU are subject to FSU Policy and Regulations approved by FSU's Board of Trustees.

**Labor Disputes.** Supplier shall give prompt notice to FSU of any actual or potential labor disputes which may delay or may delay performance of the PO.

**Laws and Regulations.** Supplier is solely responsible for keeping themselves fully informed of and faithfully observing all laws, ordinances, and regulations and shall protect and indemnify FSU, its officers and agents against any claims of liability arising from or based on any violation thereof.

**Leased Equipment.** The risk of loss or damage to leased equipment, goods or property shall not transfer to FSU except as provided in §680.219, Florida Statutes. Any security interest in the leased equipment, goods or property granted to Payee contrary to AGO 79-72 and AGO 80-9 is null and void. Limitation of remedies provisions, which are unconscionable under applicable Florida law, are void.

**Liability.** Supplier's entire liability and FSU's exclusive remedy shall be as follows:

In all situations involving performance or non-performance of equipment or programming furnished under this PO, FSU's remedy is:

- (a) The adjustment or repair of the equipment or replacement of its parts by Supplier, or, at Supplier's option, replacement of the equipment or correction of programming errors, or
- (b) If, after repeated efforts, Supplier is unable to install the equipment or replacement equipment, model upgrade or feature in good working order, or to restore it to good working order, or to make programming operate, all as warranted, FSU shall be entitled to recover actual damages to the limits set forth in this provision. For any other claim concerning performance or non-performance by Supplier pursuant to, or in any other way related to the subject matter of, this PO or any order under this PO, FSU shall be entitled to recover actual damages to the limits set forth in this provision.

Supplier's liability for damages to FSU for any cause whatsoever, and regardless of the form of action stated herein for the specific equipment that caused the damages or that the subject matter of, or are directly related to the cause of action, the foregoing limitation of liability will not apply to:

- (a) The payment of cost and damage awards pertaining to patent and copyright indemnity, or to
- (b) Claims for re-procurement costs or the cost to cover pursuant to FSU Regulation 2.015.
- (c) Claims for personal injury or damage to real or personal property caused by Supplier's tortious conduct.

Supplier shall hold and save FSU harmless for any and all suits and judgments against FSU and FSU Board of Trustees for personal injury or damage to real or personal property caused by Supplier's tortious conduct in the performance of this PO provided that:

- (a) FSU promptly notifies the Supplier in writing of any claim, and
- (b) Supplier shall be given the opportunity, at its option, to participate and associate with FSU in the control, defense and trial of any claim and any related settlement negotiations and, provided further, that Supplier shall save and hold FSU harmless, Supplier shall have the sole control of the defense, trial and any related settlement negotiations, and
- (c) FSU fully cooperated with Supplier in the defense of any claim.

In no event, however, will Supplier be liable for:

- (a) Any damages caused by FSU's failure to perform FSU's responsibilities, or for
- (b) Any lost profits or other consequential damages, even if Supplier has been advised of the possibility of such damages, or for
- (c) Any claim against FSU by any other party, except as provided in the hold harmless provision and except as provided in the entitled or non-performance of equipment or programming located outside the United States or Puerto Rico.

**Liens.** The Supplier shall keep FSU free and clear from all liens asserted by any person or entity for any reason arising out of the furnishing of services or materials by or to the Supplier.

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

**Lobbying, Integrity and Gratuities.** The Supplier shall not, in connection with this or any other agreement with FSU, 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 any officer or employee of FSU, any gratuity for the benefit of, with a view toward securing favorable treatment with respect to awarding, implementing, amending or the making of any determinations with respect to the performing of such PO, or at the discretion or request of, any state officer or employee and (3) lobby the Legislature or any official, officer, commission, board, authority, council, committee, or department of the executive branch of the judicial branch of state government, pursuant to Sec. 216.347, F.S.

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 PO of any kind. FSU may, by written notice to the Supplier, cancel the PO, pursuant to this provision, if it is discovered that gratuities were given by Supplier. FSU shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Supplier in providing such gratuities. Upon request of FSU, the Supplier shall provide any type of information FSU deems relevant to the Supplier's integrity or responsibility. Such information may include, but shall not be limited to, the Supplier's business or financial records, documents, or files of any type or form that refer to or relate to the PO. The Supplier shall retain such records for the longer of (1) three years after the expiration of the PO or (2) the period required by the General Records Schedules maintained by the Florida Department of State. The Supplier agrees to reimburse FSU for the reasonable costs of investigation incurred by FSU or other authorized FSU official for investigations of the Supplier's compliance with the terms of this or any other agreement between the Supplier and FSU which results in the suspension or debarment of the Supplier. 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 Supplier shall not be responsible for any costs of investigations that do not result in the Supplier's suspension or debarment.

**Marks, Names, Logos, Designations.** The Supplier is not authorized to use the names, symbols, emblems, designs, colors, uniforms, logos, designations and other proprietary marks of FSU in connection with advertising, merchandising, promotion and sale of products or services without the prior written approval from the Florida State University of Trademark Licensing (Ph: 850-644-3141 or [licensing.fsu.edu](http://licensing.fsu.edu)). For more information regarding use of the certain university emblems and logos, contact the Office of University Trademark Licensing at 850-644-3141 or visit [licensing.fsu.edu](http://licensing.fsu.edu).

**Ownership of Performance Materials.** Supplier assigns to FSU any and all rights, title and interest, including without limitation copyrights, trade secrets and proprietary rights to the work developed or prepared for FSU pursuant to the PO (the "Work"). The Work will be deemed "work made for hire" under the federal copyright laws. Supplier agrees to give FSU reasonable assistance, at FSU's expense, to perfect assignment of such rights, title and interest. To the extent the Work includes data, modules, components, designs, utilities, subsets, objects, processes, tools, models and specifications ("Technical Elements") owned or developed by Supplier prior to or independently from its engagement with FSU, Supplier will

designate the Technical Elements prior to execution of this Agreement and will grant to FSU a perpetual, worldwide, fully paid-up limited license to use the Technical Elements or other Supplier proprietary property for FSU's purposes. Furthermore, Supplier hereby grants to FSU all rights of ownership (including all intellectual property rights) in, and the complete and unrestricted use of, all drawings, documents, videotapes, CDs and other tangible and intangible items prepared or produced by Supplier in connection with its performance under this Agreement, including but not limited to source code ("Performance Materials"). Supplier agrees to use Performance Materials only in connection with the services it provides under this PO.

If for any reason the Work would not be considered a work made for hire under applicable law, Supplier sells, assigns and transfers to FSU all right, title and interest in the copyright of the Work and in all works based upon, derived from, or incorporating the Work, and in all income, royalties, damages, claims and payments due or payable now or in the future, and in all causes of action, either in law or in equity for past, present or future infringement based on the copyright, and in all rights corresponding to the foregoing throughout the world.

Supplier agrees to execute all papers and to perform such other acts as FSU may deem necessary to secure the rights assigned and will not use the material for any purpose other than that set forth in this PO.

Upon the expiration or termination of the PO, Supplier will immediately deliver to FSU all Performance Materials, all Confidential Information in Contractor's possession and all other property belonging to FSU.

**Payment.** In accordance with Section 215.422, Florida Statutes, FSU shall pay Supplier, interest at a rate as established by Section 55.03(1), Florida Statutes, on the unpaid balance, if a warrant in payment of an invoice is not issued within forty (40) days after receipt of a correct invoice and receipt, inspection, and approval of the goods and services. Interest payments of less than one dollar (\$1) will not be enforced unless Supplier requests payment. To obtain the applicable interest rate, please contact FSU Controller's Payables and

Disbursements Section. Payments made to health care providers for hospitals, medical or other health services, shall be made not more than 35 days from the date of eligibility for payment is determined, and the daily interest rate is 1% per month. Invoices returned to a Supplier due to preparation errors will result in a payment delay. Interest penalties of less than \$1 will not be paid unless the Supplier requests payment. The payment period does not begin until all terms of the PO (including shipping and billing instructions exactly as they are specified on the PO) have been met and a properly completed invoice is provided to FSU. Invoices received from Suppliers that have failed to supply FSU with a complete and accurate W-9 or other form that provides all necessary data to determine 1099 status will be deemed insufficient for payment until such information is received.

**NQIE:** Unless otherwise noted in the solicitation document, contract, or PO, FSU's standard payment terms are net 40 from receipt of the invoice, goods received, or services performed, whichever is later. Suppliers that utilize FSU's [ePayables Program](#) will maintain a preferred supplier status with FSU. Suppliers can select from one of the following payment terms:

- (a) FSU's [ePayables Program](#) NET 14 (Preferred)
- (b) 2% 10 Net 40 via ACH or PayMode (Bank of America)
- (c) Net 40

**Payment Card Industry Data Security Standard.** For e-commerce business and/or credit card transactions, Supplier agrees to be bound by the requirements and terms of the Rules of all applicable Card Associations, as amended from time to time, and be solely responsible for security and maintaining confidentiality of card transactions processed by means of electronic commerce up to the point of receipt of such transactions by Bank. Supplier is required to be in compliance with the requisites of the SAS 70 and/or Payment Card Industry Data Security Standard and provide written attestation of compliance annually.

**Payment Contingent Upon Appropriation (Federal and State Funding).** FSU's performance and obligation to pay under this PO is contingent upon an annual appropriation by the Legislature of the State of Florida and/or the allocation of funds through Federal grant programs and no liability on account thereof shall be incurred by FSU beyond monies available for this purpose. If this PO is funded by the federal government, Supplier is subject to compliance with the standards and requirements with all applicable federal acquisition regulations. In the event that the Florida State Governor and Cabinet are required to impose a mandatory reserve on appropriations, FSU shall amend this PO to place in reserve the amount determined by FSU to be necessary because of the mandatory reserve. Such amendments may provide for adjustments in the deliverable products and services as maybe necessary.

**Prompt-Payment Discount - Date for Reckoning.** For purposes of determining whether a prompt-payment discount, if applicable, may be taken by FSU, the starting date of such reckoning period shall be the later of the date of a properly executed invoice or the date of completion of service and/or delivery of product.

**Protection of Property.** The Supplier shall at all times guard against damage or loss to the property of FSU or of others or Supplier shall be held responsible for replacing or repairing any such loss or damage. FSU may withhold payment or make such deductions as deemed necessary to insure reimbursement or replacement for loss or damage to property through negligence of the Supplier or their agents. The Supplier shall provide all barricades and take all necessary precautions to protect buildings and personnel.

**Public Records Access.** FSU may immediately cancel this PO in the event Supplier refuses reasonable public access to all documents, papers, letters, or other materials made or received by Supplier in conjunction with this PO, unless the reports are exempt from Section 24(e) of Article I of the Florida Constitution or Section 119.07(1), Florida Statutes. Refusal or unreasonable delay by the Supplier

to allow such public access shall be grounds for cancellation of this PO by FSU.

**Public Records, Contract for Services.** **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (850) 644-4440, Office of General Counsel, Florida State University, 222 South Copeland Street, Suite 424, Westcott Building, Tallahassee, FL 32306-1400.**

The parties agree that Supplier meets the definition of "Supplier" under Section 119.0701, Florida Statutes. Accordingly, in addition to other contract requirements provided by law, Supplier must comply with public records laws, including the following provisions of Section 119.0701, Florida Statutes.

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
- (b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining public records and transfer, at no cost to the public agency all public records in possession of the Supplier upon termination of the PO/Contract and destroy any duplicate public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

If Supplier does not comply with a public records request, FSU shall enforce the PO provisions and may terminate this PO as provided herein.

**Purchase Orders.** FSU requires that a Supplier have a valid University PO issued, and any PO or Agreement be signed by a representative that has delegated Power of Attorney to do so, before shipping any merchandise. The PO number must be shown on all invoices. Supplier shall not deliver or furnish products until FSU transmits a PO. All PO's shall bear the PO or solicitation number, shall be placed by FSU directly with the Supplier, and shall be deemed to incorporate by reference the PO and solicitation terms and conditions. Any discrepancy between the PO terms and the terms stated on the Supplier's order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to FSU. If a Supplier ships products to FSU without prior receipt of an authorized University PO or purchasing card number, FSU reserves the right to reject and return any products received at the Supplier's expense. Suppliers who perform services for FSU without prior receipt of an authorized FSU PO or purchasing credit card number jeopardize future business opportunities with FSU as well as removal from FSU's preferred supplier's list, if applicable. At no time is the Supplier authorized to ship product to or perform service at a location other than what is stated on the official FSU PO or requested at the point-of-sale by an authorized purchasing card cardholder.

Suppliers are cautioned against acting on oral or written requests for supplies, equipment, or services from any department or individual unless accompanied by a specific PO or purchasing card number. FSU will not be responsible for orders accepted or shipped by Suppliers without that required authorization. The appropriate PO number should appear on all correspondence to include invoices, packages, bills of lading, and packing lists.

**Public Entity Crime.** In accordance with Section 287.133(2)(a), Florida Statutes, and FSU Procurement Regulation 2.015, FSU may not purchase commodities or contractual services from a person or affiliate who has been convicted of a public entity crime and has been placed on the State of Florida's convicted vendor list for a period of 36 months from the date of being added to the convicted vendor list. Supplier warrants that they are not on the convicted Supplier list for a public entity crime committed within the past 36 months.

**Quality.** FSU shall be the sole judge in determining "equals" with regard to quality, price and performance. All products delivered shall be newly manufactured and the current model, unless otherwise indicated on the PO.

**Right of Offset.** FSU shall be entitled to offset against any sums due the Supplier, any expenses or costs incurred by FSU, or damages assessed by FSU concerning the Supplier's non-conforming performance or failure to perform the PO, or any other debt owing FSU, including expenses, costs and damages described in the termination provisions.

**Safety Standards.** Unless otherwise stipulated, all manufactured items and fabricated assemblies shall comply with applicable requirements



of The American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories; The National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act (OSHA) and State and Federal requirements relating to clean air and water pollution and any standards thereunder.

**Sale or Bankruptcy of Supplier's Business.** If, during the life of this PO, the Supplier disposes of its business by sale, transfer, force of law or by any means to another party, all obligations are transferred to such party. The new owner(s) may, in FSU's absolute discretion, be required to submit a performance bond in the amount of the open balance of the PO. In the event of any suspension of payment or the institution of any proceedings by or against Supplier, voluntary or involuntary, in bankruptcy or insolvency, or under the provisions of the Federal Bankruptcy Act, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors of the property of Supplier, FSU shall have, in addition to the rights stated in the two preceding sentences, the right to cancel this PO forthwith.

**Severability.** Should any provision of this PO, or the acquisition of services for which this PO is issued, be held to be void or unenforceable, by action of law or court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

**Shipping.** Supplier shall substantially pack, mark and ship all Goods in a manner to secure the lowest, reasonable transportation cost and in accordance with the shipping instructions contained in the PO and the requirements of common carriers. Supplier shall be liable for any difference in shipping charges arising from its failure to follow the shipping instructions contained herein or properly describe the shipment. The Parties agree to assist each other in the prosecution of claims against carriers

**Supplier Personnel.** In the event "Supplier Personnel" or "Personnel" (defined to include the officers/owners, employees, contractors, and agents of Supplier) are required to provide services to FSU at its campuses, facilities, or events, Supplier must make commercially reasonable efforts to ensure that its Personnel act in a manner that assists FSU in providing a safe environment for its students, faculty, staff, and visitors and protects the reputation of FSU. Supplier agrees that it, and all of its Personnel, will carry out their duties under the PO in accordance with all FSU policies as well as local, state, and federal law, including but not limited to laws governing employee compensation and insurance coverage and policies governing discrimination and sexual harassment. Supplier must ensure that its Personnel performing services under the PO are aware of their obligations and are appropriately and regularly trained to ensure compliance with these requirements and, when required by FSU, have completed an appropriate background check in accordance with Chapter 435, Florida Statutes. In the event Supplier Personnel violate the law or FSU policy, as determined by law enforcement or FSU policy, in FSU's sole discretion, after investigating such violations, FSU may request that such Supplier Personnel are restricted from performing services under the Agreement. If any Personnel is a convicted sexual offender or predator pursuant to F.S. 775.21, Supplier agrees to notify the FSU Police Department at 850-644-1234. It is expressly agreed to by the parties that multiple violations of this section will be deemed a material breach by Supplier and subject to immediate termination.

**Taxes.** FSU does not pay Federal Excise or Florida Sales Tax on direct purchases of tangible personal property. The appropriate exemption number is available upon request. This exemption does not apply to purchases of tangible personal property made by Suppliers who use the tangible personal property or service in performance of POs for the improvement of FSU-owned real property as defined in Chapter 192, F.S.

**Termination. For Cause.** The PO may be terminated by FSU, for cause, if the other party fails to perform or comply with any of the material terms, covenants, agreements or conditions. This includes if the Supplier fails to (1) deliver the product or service within the time specified in the PO or any extension, (2) maintain adequate progress, thus endangering performance of the PO, (3) honor any term of the PO, (4) abide by any statutory, regulatory, or licensing requirement, or (5) any bankruptcy, insolvency, reorganization, arrangement, liquidation, dissolution or similar proceeding, domestic or foreign, is instituted by or against the Supplier. FSU Regulation 2.15 governs the procedure and consequences of default. The Supplier shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Supplier shall not be liable for any excess costs if the failure to perform the PO arises from events completely beyond the control, and without the fault or negligence, of the Supplier. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Supplier and the subcontractor, and without the fault or negligence of either, the Supplier shall not be liable for any excess costs for failure to perform, unless the subcontracted products or services were obtainable from other sources in sufficient time for the Supplier to meet the required delivery schedule. If, after termination, it is determined that the Supplier was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of FSU. In the event of default, FSU may, upon termination of the PO, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under the PO. The Supplier shall be liable to FSU for any excess costs incurred by FSU in re-procuring the materials or services. The rights and remedies of FSU in this clause are in addition to any other rights and remedies provided by law or under the PO.

**For Convenience.** This PO shall be subject to cancellation by FSU at any time upon thirty (30) days written notice to Supplier without penalty or cause. A termination penalty may not be charged to FSU. FSU shall be liable only for payment for service rendered, or payments already made, prior to the effective date of termination.

**Title and Risk of Loss.** Unless otherwise specified in the PO, the title and risk of loss of the goods and equipment shall not pass to FSU until FSU actually receives the goods and equipment at the point of delivery.

**Underwriters' Laboratories.** Unless otherwise stipulated, all manufactured items and fabricated assemblies shall carry U.L. approved and reexamination listing where such has been established.

**Waiver.** Failure of any party to timely enforce any of the terms or provisions of the PO shall not constitute a waiver of any such terms or provisions in the future; such terms and/or provisions shall continue in full force and effect.

**Warranties. Warranty of Merchantability.** Goods provided by Supplier under a PO or Contract shall be merchantable. All goods provided shall be of good quality within the description given by FSU, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by FSU, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the Supplier on the container or label.

**Warranty of fitness for a particular purpose** - When a Supplier has reason to know or knows any particular purpose for which the goods are required, and FSU is relying on the Supplier's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

**Warranty of title** - Supplier shall, in providing goods to FSU, convey good title in those goods, whose transfer is right and lawful. All goods provided by Supplier shall be delivered free from any security interest, lien, or encumbrance of which FSU, at the time of PO, has no knowledge. Goods provided by Supplier shall be delivered free of any rightful claim of any third person by infringement or the like.

## **OTHER TERMS**

1. **Americans with Disabilities Act.** Supplier should identify any products that may be used or adapted for use by visually, hearing or other physically impaired individuals.
2. **Pride.** This statement applies to goods and services certified as available from PRIDE (Prison Rehabilitative Industries & Diversified Enterprises, Inc.). It is expressly understood and agreed that any articles which are the subject of, or required to carry out this PO shall be purchased from the corporation identified under Chapter 946, F.S., in the same manner and under the same procedures set forth in Section 946.15(2), (4), F.S.; and for purposes of this PO the person, firm, or other business entity carrying out the provisions of this PO shall be deemed to be substituted for this agency insofar as dealings with such corporation are concerned.
3. **Supplier Diversity Initiative.** FSU is an equal opportunity institution and, as such, encourages the use of small businesses, including minority, women and veteran-owned small businesses in the provision of goods and services. Small businesses should have fair and equal opportunity to compete for dollars spent by FSU. Competition ensures that prices are competitive and a broad Supplier base is available. Supplier shall use good faith efforts to ensure opportunities are available to small businesses, including minority, women and veteran-owned businesses. For questions about FSU's Supplier Diversity Program, contact 850-645-8207 or email at [FSUSupplierDiversity@admin.fsu.edu](mailto:FSUSupplierDiversity@admin.fsu.edu).
4. **Material Safety Data Sheets.** In compliance with Code of Federal Regulations, 29CFR1910.1200 if this PO involves the shipping of any item designates as a toxic substance such shipment must be accompanied by a Material Safety Data Sheet (MSDS). A toxic substance is designated as any chemical substance or mixture in gaseous, liquid, or solid state, which can cause harm to the human body.
5. **Conflict of Interest.** The Supplier certifies the Company's Directors and/or Principal Officers are not employed and/or affiliated with FSU, unless a current Report of Specified interest form has been approved.
6. **Florida Sexual Predators Act.** Any Supplier or subcontractor who FSU contracts with must comply with F.S. 775.21 relative to the registration of any employee who is a convicted sexual offender or predator. For additional information, contact the FSU Police Department at 850-644-1234.
7. **Tobacco Free Campus Policy.** The FSU campus is a tobacco-free campus. This policy became effective January 1, 2013. The use of cigarettes or other tobacco products in FSU-owned buildings, vehicles, private residences, or seating arena of any FSU-owned athletic stadium is prohibited. The Supplier is expected to respect this smoke free policy and fully comply with it.
8. **Sexual Harassment.** Federal law and the policies of FSU prohibit sexual harassment of FSU employees or students. Sexual harassment includes any unwelcome sexual advance toward an FSU employee or student, any request for a sexual favor from an FSU employee or student, or any other verbal or physical conduct of a sexual nature that is so pervasive as to create a hostile or offensive working environment for FSU employees, or a hostile or an offensive academic environment for FSU students. FSU contractors, subcontractors and suppliers for this project are required to exercise control over their employees so as to prohibit acts of sexual harassment of FSU employees and students. The employer of any person who FSU, in its reasonable judgment, determines has committed an act of sexual harassment agrees as a term and condition of the PO to cause such person to be removed from the project site and from FSU premises and to take such other action as may be reasonably necessary to cause the sexual harassment to cease.
9. **Federal Acquisition Regulation Applicability.** If federal grants are involved with this PO or contract, Supplier must comply with additional provisions as noted here: <https://procurement.fsu.edu/sites/g/files/upcbnu3941/files/docs/FederalAcquisitionRegulations.pdf>
10. **E-Verify:** FSU is obligated to comply with the provisions of §448.095, Florida Statutes, "Employment Eligibility." Compliance with

§448.095, Florida Statutes, includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Supplier affirms and represents that it is registered with the E-Verify system and are using same, and will continue to use same, as required by §448.095, Florida Statutes.

11. **Human Trafficking Disclosure.** Pursuant to, and as required by Section 787.06, Florida Statutes, Supplier's acceptance of this Purchase Order constitutes its confirmation and attestation that it does not use coercion or services as defined in same.

12. **Countries of Concern.** Pursuant to, and as required by Section 228.860(1), Florida Statutes, Supplier's acceptance of this Purchase Order constitutes its confirmation and attestation that it is not a foreign principal of a country of foreign concern.