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CLERK OF THE CIRCUIT COURT / COMPTROLLER

HILLSBOROUGH COUNTY  
TAMPA, FLORIDA 33602

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**Subject:**                   **CONTRACT TERMS AND CONDITIONS**

**Effective date:**       **March 28, 2017**

**Supersedes:**         **Version dated February 1, 2016**

**PURPOSE**

Provide terms and conditions applicable to any vendor proposal for purchases made by the Clerk of the Circuit Court unless the purchase is subject to an existing, applicable contract, or unless terms and conditions are expressly agreed otherwise in a writing signed by the parties.

**GENERAL TERMS AND CONDITIONS**

**1. Definitions.** The Clerk adopts the following definitions, which shall apply to this Contract.

(a) “Contract” means the enforceable agreement that results from a successful solicitation or procurement. The parties to the Contract will be the Clerk and Contractor.

(b) “Clerk” means Pat Frank, as Clerk of the Circuit Court for Hillsborough County, Florida, a constitutional officer of Florida. When the Clerk procures a Product or Service using a state purchasing agreement or a state term contract, the Clerk is acting as an “Eligible User”, as defined in section 287.012(11), Florida Statutes.

(c) “Product” means any deliverable under the Contract, which may include goods or commodities, equipment, technology hardware, technology software including licenses, technology, connectivity facilities such as fiber optic runs and related services.

(d) “Service” means a Contractor’s rendering time and effort rather than the furnishing of a Product.

(e) “Contractor” means a party to the Contract providing a Product and/or Service to the Clerk as specified in the Contract.

(f) “Vendor” has the same meaning as “Contractor” and may be used interchangeably with “Contractor”.

(g) “Purchase Order” a written order signed by the Clerk or a designated Clerk representative that identifies a Product, Service or combination thereof and related information that is authorized by the terms of an existing Contract.

**2. Purchase Orders.** In contracts where Products or Services are ordered by the Clerk via purchase order, Contractor shall not deliver or furnish Products or begin to perform Services until the Clerk transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by the Clerk directly with the Contractor, and shall be deemed to incorporate by reference the Contract terms and conditions. Any discrepancy between these Contract terms and the terms stated on the Contractor's order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Clerk. A purchase order for services governed by section 287.058(1), Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. The Clerk shall designate a contract manager and/or a contract administrator whose identity and contact information shall be contained in the Purchase Order.

**3. Price Changes.** If Price Changes are permitted by the Contract, the following provisions apply.

(a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. The Clerk may seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. The Clerk will document its files accordingly.

(b) Best Pricing Offer. During the Contract term, if the Clerk becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Clerk, the price under the Contract shall be immediately reduced to the lower price.

(c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to change in market conditions, a Contractor may conduct sale promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Manager, if one is designated in the Contract, documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to the Clerk. Upon approval, the Contractor shall provide conspicuous notice of the promotion.

(d) Trade-In. The Clerk may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Clerk and the Contractor. The Clerk is obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process.

(e) Equitable Adjustment. The Clerk may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract sources of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.

**4. Americans with Disabilities Act.** Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.

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

**6. Risk of Loss.** Section 215.422, Florida Statutes governing Risk of Loss is incorporated by reference into the Contract. Until Products shipped to the Clerk are inspected and accepted, risk of loss or damage shall remain with the Contractor. The Clerk will provide Contractor with written notification of any Products rejected because of damage discovered by inspection. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with the damage claims, the Clerk shall: (1) record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; (2) report damages to the carrier and the Contractor; and (3) provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When the Clerk rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Clerk shall have the right to dispose of it as its own property. Contractor shall reimburse the Clerk for cost and expenses incurred in storing or effecting removal or disposition of rejected product.

**7. Invoicing and Payment.** Invoices and/or Purchase Order shall contain sufficient information to identify the Vendor and the Contract. The Clerk may require any information from the Contractor that the Clerk deems necessary to verify any purchase order placed under Contract. Payment shall be made in accordance with section 218.70 Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. The Clerk's failure to pay, or delay in payment, shall not constitute a breach of the Contract, and shall not relieve the Contractor of its obligations to the Clerk, except as provided in section 218.70, Florida Statutes.

**8. Taxes.** The Clerk is exempt from payment of Federal and State excise or sales taxes on direct purchases of Products that are tangible personal property. The Clerk will reject that part of any Invoice that attempts to charge the Clerk for any personal property taxes levied on the Contractor or for any taxes levied on employee's wages. Any exceptions to this paragraph shall be explicitly noted by the Clerk on a purchase order or other special contract condition. On request, the Clerk will provide the Contractor with a Tax Exempt Certificate.

**9. 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 Clerk in writing, indicating the specific restriction. The Clerk reserves the right and the complete discretion to accept any such alteration and amend the Contract accordingly or to cancel the Contract at no further expense to the Clerk.

**10. Lobbying and Integrity.** The Contractor shall not, in connection with this or any other agreement with the Clerk, directly or indirectly, (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any Clerk 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 Clerk officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans,

subscriptions, advances, deposits, of money, services, employment, or contracts of any kind. Upon request of the Inspector General, or other authorized Clerk official, the Contractor shall provide any type of information that is deemed 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 three years after the expiration of the Contract. The Contractor agrees to reimburse the Clerk for the reasonable cost of investigation incurred by the Inspector General or other authorized Clerk official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Clerk 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 cost of investigations that do not result in the Contractor's suspension or debarment.

**11. 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 Clerk and its 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 Clerk.

Further, the Contractor shall fully indemnify, defend, and hold harmless the Clerk 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 the Clerk's misuse or modification of Contractor's products or the Clerk'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 Clerk 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 Clerk the right to continue using the product, the Contractor shall remove the product and refund the Clerk the amounts paid in excess of a reasonable rental for past use. The Clerk 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 Clerk 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 Clerk in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld. The Clerk as a county constitutional officer enjoys the privileges of sovereign immunity and will not waive the sovereign immunity privilege by any contract term including an indemnity clause that attempts to require the Clerk to indemnify the Contractor or any third party. The Clerk will not and does not provide any indemnity to the Contractor or any other person or entity as a condition of the Contract. Any such Contract term that attempts to impose an indemnity obligation by the Clerk is void ab initio.

**12. 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 Clerk may, in addition to other remedies available to it 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 it. The Clerk may set off any liability or other obligation of the Contractor or its affiliates to the Clerk against any payments due the Contractor under any contract with the Clerk.

**13. Purchase Order Duration.** Purchase orders issued pursuant to a Clerk Contract must be received by the Contractor no later than close of business on the last day of the contract's term to be considered timely. The Contractor is obliged to fill those orders in accordance with the contract's terms and conditions. Purchase orders received by the contractor after close of business on the last day of the Clerk contract's term may be considered void by the Contractor.

Purchase orders for a one-time delivery of Products or performance of contractual Services shall be valid through the performance by the Contractor, and all terms and conditions of the Contract shall apply to the single delivery/performance, and shall survive the termination of the Contract.

Contractors are required to accept purchase orders specifying delivery schedules exceeding the contracted schedule even when such extended delivery will occur after expiration of a state or agency contract. For example, if a Contract calls for delivery 30 days after receipt of order (ARO), and an order specifies delivery will occur both in excess of 30 days ARO and after expiration of the Contract term, the Contractor will accept and fulfill the order. However, if the Contractor expressly and in writing notifies the Clerk's contract manager identified in the Purchase Order within ten (10) calendar days of receipt of the purchase order that Contractor will not accept the extended delivery terms beyond the expiration of the Clerk contract, then the purchase order will either be amended in writing by the ordering entity within ten (10) calendar days of receipt of the contractor's notice to reflect the Clerk's contract delivery schedule, or it shall be considered withdrawn.

The duration of Purchase Orders for recurring deliveries of Products or performance of Services shall not exceed the expiration of the Clerk contract by more than twelve months. However, if an extended pricing plan offered in the Clerk Contract is selected, the contract terms on pricing plans and renewals shall govern the maximum duration of Purchase Orders reflecting such pricing plans and renewals.

Timely Purchase Orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the Clerk Contract shall apply to the recurring delivery/performance as provided herein, and shall survive the termination of the Contract.

The Clerk's identified contract manager shall not renew a Purchase Order issued pursuant to a Clerk Contract if the underlying contract expires prior to the effective date of the renewal.

**14. Suspension of Work.** The Clerk may, in its sole discretion, suspend any or all activities under the Contract, at any time, when in the best interests of the Clerk to do so. The Clerk 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. Within ninety days, or any longer period agreed to by the Contractor, the Clerk shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract. Suspension of work shall not entitle the Contractor to any additional compensation.

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

**16. Termination for Cause.** The Clerk may terminate the Contract if the Contractor fails to (1) deliver the Product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, or regulatory, or licensing requirement. The Contractor shall continue work on any work not terminated. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as it the termination had been issued for the convenience of the Clerk. The rights and remedies of the Clerk in this clause are in addition to any other rights and remedies provided by the law or under the Contract.

**17. Public Records Requirement.** The Clerk may terminate a Contract if the Contractor refuses to allow public access to all documents, papers, letters or other material made or received by the Contractor in conjunction with the Contract, unless the Records are exempt under Florida law.

A. The Clerk is the custodian of all public records in paper or electronic form that are received or generated by the Clerk (or third parties at the Clerk's direction) in the performance of all Clerk duties. Pursuant to section 119.0701, Florida Statutes (2016), Contractor shall keep and maintain public records required by the Clerk to perform Contractor's services defined by this Agreement. The Clerk's custodian of public records is the Clerk's contract manager identified in the Contract documents. Successor Clerk custodians of public records will be promptly identified in writing to the Contractor.

B. This Agreement adopts the definition of "Public records" contained in section 119.011(12), Florida Statutes (2016) and identifies the Clerk as a "Custodian of public records" as defined in section 119.011(5), Florida Statutes (2016).

C. Upon request from the Clerk's custodian of public records, Contractor shall provide the Clerk with a copy of the requested records or allow the requested records to be inspected or copied within a reasonable time at a cost that does not exceed the costs permitted by Chapter 119, Florida Statutes.

D. Contractor shall ensure that public records that are exempt or confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term. At the end of the contract term, the Contractor shall transfer all public records (as defined herein) back to the Clerk and destroy any duplicate public records remaining in Contractor's possession. Thereafter, the Contractor's obligations under this paragraph 17 shall terminate.

E. If the Clerk receives a public records request for a public record in the custody of the Contractor as identified above, the Clerk shall immediately notify the Contractor of the Request and the Contractor shall provide the requested records to the Clerk or allow the requested records to be inspected or copied within a reasonable time, but only after first redacting all exempt or confidential information contained within the requested records.

F. If Contractor does not comply with the Clerk's request for records, the Clerk shall enforce the contract provisions in accordance with the terms of this Agreement. Subsections (3) and (4) of section 119.0701, Florida Statutes are incorporated by reference into this Paragraph 17 of the Agreement and further define the obligations and penalties for Contractor's noncompliance with section 119.0701, Florida Statutes. 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 (813) XXX-XXXX, (INSERT EMAIL ADDRESS), RECORDS CUSTODIAN, 601 EAST KENNEDY BLVD., 13<sup>TH</sup> FLOOR, TAMPA, FL 33601.

**18. Force Majeure, Notice of Delay, and No Damages for Delay.** The Contractor shall not be responsible for the delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Clerk in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could not reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Clerk. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Clerk for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes

have ceased to exist the Contractor shall perform at no increased cost, unless the Clerk determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the Clerk, in which case the Clerk may accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to the Clerk with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

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

**20. Advertising.** The Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Clerk, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Clerk or otherwise linking the Contractor's name and either a description of the Contract or the Clerk in any material published, either in print or electronically, to any entity that is not a party to Contract.

**21. 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 Clerk; provided, however, that either party may, without the consent of the other party, assign its rights under this Contract if such assignment is to a successor of the assigning party by consolidation, merger or operation of law, or to a purchase of all or substantially all of the assigning party's assets; or provided, the Contractor assigns to the Clerk any and all claims it has with respect to the Contract under the antitrust laws of the United States and the Clerk. In the event of any assignment, the Contractor remains secondarily liable for performance of the Contract, unless the Clerk expressly waives such secondary liability. The Clerk may assign the Contract with prior written notice to Contractor of its intent to do so.

**22. Dispute Resolution.** Any dispute concerning performance of the Contract shall be decided by the Clerk, or other designated Clerk employee, who shall reduce the decision to writing and serve a copy on the Contractor. The exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be in state or federal court in Hillsborough County, Florida. Florida law shall apply. **THE PARTIES WAIVE ALL RIGHTS TO A JURY TRIAL.**

**23. 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 Clerk. The Clerk 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 Clerk may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualification, quality of work, change in security status, or non-compliance

with Clerk'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 Clerk may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

**24. Security and Confidentiality.** The Contractor shall comply fully with all security procedures of the Clerk 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 Clerk. 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 Clerk'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. At the Clerk's sole discretion, the Contractor shall sign a separate written Confidentiality Agreement, if the Clerk determines that such a Confidentiality Agreement is required by law or any other contract the Clerk has with any third party.

**25. Contractor Employees, Subcontractors, and other Agents.**

A. The Contractor's employees, subcontractors and other agents are not, and the Contractor shall never assert that the Contractor's employees, subcontractors and other agents are employees of the Clerk.

B. **No Third Party Beneficiaries.** Nothing in this Contract is intended to and shall not operate to benefit, create any rights in, or otherwise confer any rights upon any third party, including Contractor employees, subcontractors, suppliers, and agents or any other government agency.

**.26. 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.

**27. 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.

**28. 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 Clerk in writing if its ability to perform is compromised in any manner

during the term of the Contract. This is a continuing Warranty that extends through the Contract term.

**29. Notices.** All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery to the agency designee identified in the original solicitation, or as otherwise identified by the Clerk. Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.

**30. 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 Clerk and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Clerk and the Contractor. No oral agreements or representations shall be valid or binding upon the Clerk or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Clerk. 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 Clerk'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.

**31. Waiver.** The delay or failure by the Clerk to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Clerk'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.

**32. Annual Appropriations.** The Clerk's performance and obligation to pay under this contract are contingent upon the availability of funds appropriated by the Legislature and/or Hillsborough County.

**33. 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.

**34. Severability.** If the Clerk 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.

**35. Travel.** Travel expenses and per diem costs will be paid in accordance with s. 112.061, Florida Statutes. The Clerk may establish rates lower than the maximum provided in s. 112.061.

**36. Right to Audit.** The Contractor will keep adequate records and supporting documentation applicable to this Contract. Said records and documentation will be retained by the Contractor for a minimum of five (5) years from the date of termination of this Contract or from the date of final payment under this Contract, whichever is longer (the "Record Retention Period"). The Clerk and its authorized agents shall have the right to audit, inspect and copy all such records and

documentation as often as the Clerk deems necessary during the Contract Period and during the Record Retention Period. The Record Retention Period will be extended until audit findings are issued if an audit is initiated during the Record Retention Period. Such activity shall be conducted only during normal business hours. During the Record Retention Period, the Clerk shall also have the right to obtain a copy of and otherwise inspect any audit made at the direction of the Contractor as concerns the aforesaid records and documentation.

**37. W-9.** The Contractor will provide the Clerk with a completed IRS Form W-9 prior to submission of the first invoice under the Contract.

**38. Payment Dispute Resolution Procedures.** Invoicing and Payment disputes shall be resolved in accordance with the Clerk's Vendor Payment Dispute Resolution Procedure. This can be found on our website at the following link:

<http://www.hillsclerk.com/-/media/Hillsclerk/Forms/Purchasing/Vendor-Payment-Procedure.pdf?la=en>

**39. Arbitration.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Claims shall be heard by a single arbitrator, unless the claim amount exceeds \$1,000,000.00, in which case the dispute shall be heard by a panel of three arbitrators. The place of arbitration shall be Hillsborough County, FL. The arbitration shall be governed by the laws of the State of Florida. Depositions shall be limited to a maximum of five per party and shall be held within ninety days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrators, and for good cause shown. Each deposition shall be limited to a maximum of five hours duration. The arbitrator(s) shall not award consequential damages in any arbitration initiated under this section. Any award in an arbitration initiated under this clause shall be limited to monetary damages and shall include no injunction or direction to any party other than the direction to pay a monetary amount. Each party shall bear its own costs and expenses and an equal share of the arbitrators' and administrative fees of arbitration. The Commercial Arbitration Optional Rules for Emergency Measures of Protection are also incorporated by the parties. The award of the arbitrators shall be accompanied by a reasoned opinion. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges shall constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver shall not allow for a default.

**40. Transaction Fee.** To the extent the Clerk has used a state contract for the acquisition of the subject Products or Services, the following terms shall apply:

The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System ("System"). Pursuant to section 287.057(23), Florida Statutes (2002), all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.

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

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

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE SUBJECT TO BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR LIST AS PROVIDED IN RULE 60A-1.006, F.A.C.**

**THE FOLLOWING SUPPLEMENTAL TERMS APPLY ONLY TO CONTRACTS FOR THE ACQUISITION OF PRODUCTS AND DO NOT APPLY TO CONTRACTS FOR THE ACQUISITION OF SERVICES.**

**1. Additional Quantities.** For a period not exceeding ninety (90) days from the date of solicitation award, the Clerk reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.

**2. Product Version.** This purchase shall be deemed to reference a manufacturer's most recently released model or version of the product at the time of the order, unless the Clerk specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.

**3. Packaging.** Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain the Clerk's property.

**4. Manufacturer's Name and Approved Equivalents.** Unless otherwise specified, any manufacturers' names, trade names, brand names, information or catalog numbers listed in a specification are descriptive, not restrictive. With the Clerk's prior approval, the Contractor may provide any product that meets or exceeds the applicable specifications. The Contractor shall demonstrate comparability, including appropriate catalog materials, literature, specifications, test data, etc. The Clerk shall determine in its sole discretion whether a product is acceptable as an equivalent.

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

**6. Safety Standards.** All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State Inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or 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 and State and Federal Requirements relating to clean air and water pollution.

**7. Transportation and Delivery.** Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Clerk places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Clerk of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.

**8. Installation.** Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with the Clerk and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

Revised March 28, 2017