

Terms of Use

Revised 4/29/09

When presented with the Terms of Use at vendor registration, you will be given an opportunity to click "I Accept", which means you agree to the terms set out herein. If you click "I decline", your information will be retained for update by you, the vendor; however, you will not be a registered Supplier on MyFloridaMarketPlace and, therefore, you will not be allowed to receive purchase orders through the Service.

- 1. ACCEPTANCE OF TERMS** Welcome to MyFloridaMarketPlace ("Service"), the statewide e-procurement system implemented by the State of Florida, through the Department of Management Services ("State"), with the assistance of a third-party agent ("Service Provider"). This service is provided to you, the Vendor, subject to the following Terms of Use ("TOU"). In addition, when using the Service, you shall be subject to any posted guidelines or rules applicable to such services. All such guidelines or rules are hereby incorporated by reference into this agreement.
- 2. DESCRIPTION OF SERVICE** MyFloridaMarketPlace provides State Vendors the ability to register with the State and conduct electronic commerce. Unless explicitly stated otherwise, any new features that augment or enhance the current Service shall be subject to the TOU. You are responsible for obtaining access to the Service through the MyFloridaMarketPlace Vendor Registration process. That access may involve third party fees such as Internet service provider or airtime charges. You are responsible for those fees. Registrants who do not have the equipment necessary for Internet access may contact Customer Support (1-866-FLA-EPRO) to obtain a list of available access locations.
- 3. TRANSACTION FEE** Pursuant to Section 287.057(23), Florida Statutes, the State hereby imposes a one percent (1.0%) Transaction Fee, effective July 1, 2003, to all transactions between you and the State or any other customer using the service, [unless exempted by rule](#) in Chapter 60A-1, Florida Administrative Code (F.A.C.), The fee shall be paid by the Vendor to the State, and shall not be added to any transaction as a separate item.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Vendor. Until the automatic deduction is implemented, the Vendor shall report and pay the Transaction Fee pursuant to procedures established by rule in Chapter 60A-1, F.A.C. By submission of these reports and corresponding payments, Vendor certifies their correctness. All such reports and payments shall be subject to audit by the State.

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

VENDORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM BIDDING ON STATE CONTRACTS.

TRANSACTION FEE DISPUTES AND EXTENSIONS. Disputes shall be handled by submitting a written request via email (vendorhelp@myfloridamarketplace.com), or through the online system. Your request shall include the Invoice number, PO

number, dollar amount billed, and any other information to support your dispute.

4. **YOUR ACCOUNT** In consideration of your use of the Service, you agree to: (i) provide true, accurate, current and complete information about yourself as prompted by the Service's registration form (such information being the "Registration Data") and (ii) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or if the State has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, the State has the right to suspend or terminate your account and refuse any and all current or future use of the Service, or any portion thereof. You will receive a password and account designation upon completing the Service's registration process. You are responsible for maintaining the confidentiality of the password and account, and are fully responsible for all activities that occur under your password or account. You agree to (i) immediately notify Customer Support of any unauthorized use of your password or account or any other breach of security, and (ii) ensure that you exit from your account at the end of each session. You are entirely responsible for all content that you upload, post, email, transmit, or otherwise make available to the State through the Service. The State and its third party agents involved, directly or indirectly, in the delivery and operation of the System, including the Service Provider ("Third Party Agents") shall not be liable for any loss or damage arising from your failure to comply with this section.
5. **ELECTRONIC INVOICING** You agree to supply electronic invoices in lieu of paper-based invoices for those transactions processed through the System. Electronic invoices shall be submitted to customers through the Ariba Supplier Network (ASN) in one of the following mechanisms - EDI 810, cXML, or web-based invoice entry within the ASN.
6. **VENDOR PRODUCT ASSURANCES**

- a. **CATALOG DATA** This section shall apply to any Vendor whose product catalog is authorized for sale to the State via term contract or other solicitation.

Service Provider is responsible for converting Contract catalog information into a format supported by the System. To accomplish this conversion, the Vendor shall provide certain information in electronic format directly to Third-Party Agent; alternatively, the Vendor may follow the "punchout" solution described in more detail below.

Within ten (10) days of written notice from Third-Party Agent, Vendor shall provide all information necessary to facilitate electronic purchases from this contract, or shall contact Third-Party Agent and begin work on the "punchout" solution described below. Such information may include, but is not limited to, Vendor name, SKU, brand/manufacturer, product name and brief description, unit of measure, and price. Vendor shall provide this information in the format requested by Third-Party Agent. No costs or expenses associated with providing this information shall be charged to the State or Third-Party Agent. With Vendor's timely assistance, Third-Party Agent shall create and maintain web-based placement of the requested contract information.

- b. **"Punchout" Alternative**

The Vendor may offer, as an alternative to providing the information discussed above, an online "punchout" solution, in which the Customer accesses the Vendor's website directly from the System, rather than the System maintaining the Vendor's data. This solution must allow the Customer to reach

the Vendor's site, browse for contracted items only, and return to the System with a list of items ready to be inserted into a requisition. If Vendor selects this alternative, it must meet the following requirements:

- The solution must conform to cXML 1.0 or 1.1 standards.
- The solution must conform to the technical specifications and implementation requirements provided by Third-Party Agent, and the Vendor must work with Third-Party Agent to ensure successful integration of the punchout solution into the System
- The solution must have the capability to provide only those products awarded under the contract, and block any non-contract item(s) from being added to the requisition.

c. Warranty

For the purposes of this section, the Vendor warrants and represents that it is authorized and empowered to and hereby grants the State and Third-Party Agent the right and license to use, reproduce, transmit, distribute and publicly display within the System the information outlined above. In addition, the Vendor warrants and represents that it is authorized and empowered to and hereby grants the State and Third-Party Agent the right and license to reproduce and display within the System the Vendor's trademarks, system marks, logos, trade dress or other branding designation that identifies the products made available by the Vendor under the Contract.

If the Vendor is not the manufacturer, it shall be the Vendor's responsibility to obtain authorization from the manufacturer to comply with the provisions of this section, including securing any intellectual property rights of the manufacturer. If the Vendor is the manufacturer, it shall only authorize dealers, outlets, distributors, value-added resellers, etc. within their network that can comply with the provisions of the Contract.

7. **Confidentiality of your Information.** Nothing in this Agreement transfers to State or its Third-Party Agent any ownership of any of your Information. The State shall endeavor to treat your Information confidentially, according to our privacy policies.
8. **Title to the Services.** You acknowledge that State or its Third-Party Agent owns all right, title and interest in and to the entire contents of the Services (other than your Information), including the underlying methodology, software and copyrightable structure of the Services. As between you and Service Provider, Service Provider is the exclusive owner or licensee of any and all copyrights, trademarks, servicemarks and any other intellectual property right relating the Services (other than your Information). State or its Third-Party Agent grants you a non-exclusive, non-transferable license to access and use the Services in accordance with this Agreement. State or its Third-Party Agent also grants you a non-exclusive, non-transferable license to print and download content on the Services solely for your non-commercial use, provided that you maintain the copyright notice and any other notices that appear on any such copies.
9. **CUSTOMER SUPPORT** The State's Third-Party Agent shall provide customer support to you sufficient for questions involving use of the Service and for inquiries relating to the operation and hosting of the Service during the hours of 8:00 AM Eastern Standard Time and 5:30 PM Eastern Standard Time. The following support services will be included: (i) a customer support telephone number (1-866-FLA-EPRO); (ii) a customer support email address (vendorhelp@myfloridamarketplace.com); and (iii) an online training feature to instruct you on conducting procurement through the

Service (<http://www.myflorida.com>).

10. **THE FLORIDA PUBLIC RECORDS ACT** Any information provided to the Service is subject to the conditions set forth in the Florida Public Records Act, Section 119.07, Florida Statutes. The Florida Statutes may be accessed at: <http://www.leg.state.fl.us/Welcome/index.cfm?CFID=43924991&CFTOKEN=44677928>. Subject to the foregoing, neither the State, its Third-party Agents, nor the Vendor shall, without prior written permission, disclose to others confidential information exchanged among themselves pursuant to the TOU or rules related to the Service, except as reasonably required for the successful delivery and operation of the Service. For purposes of this paragraph, "confidential information" means any information that is either (1) exempted from disclosure under the Florida Public Records Act or (2) both (a) conspicuously marked as such by the provider and (b) considered a "trade secret" as defined in the Uniform Trade Secrets Act, Chapter 688, Florida Statutes.
11. **E-PROCUREMENT SERVICE PRIVACY POLICY** Registration Data and certain other information about you are subject to our Privacy Policy. For more information, see our full privacy policy at the bottom of every page.
12. **MODIFICATIONS TO SERVICE** The State reserves the right at any time to modify the Service with or without notice. You agree that the State or its agents (including the Third-Party Agent) shall not be liable to you or to any third party for any modification or suspension of the Service.
13. **TERM AND TERMINATION**
 - a. Once you have accepted the TOU, an agreement has been created between you and the State for use of the Service. You are bound by the terms of these TOUs until such time as you terminate your agreement with the State by submitting a written request via email, fax or through our on-line system and receive confirmation from the State. You agree that the State, in its sole discretion, may terminate your password, account (or any part thereof) or use of the Service, and remove and discard any content within the Service, for any reason, including, without limitation, for lack of use or if the State believes that you have violated or acted inconsistently with the TOU. You agree that any termination of your access to the Service under any provision of this TOU may be effected with 10 days' written notice, using the contact information currently available, and acknowledge and agree that the State may deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or the Service. Further, you agree that the State or its agents shall not be liable to you or any third-party for any termination of your access to the Service.
 - b. **Effect of Termination.** Sections 4-7 and 9 shall survive any termination of this Agreement.
14. **OUTAGE POLICY** The State's highest priority is to ensure that the Service is available. However, we may experience website outages where the Service cannot be accessed. The State will use reasonable efforts to make the Service available, except for downtime for scheduled and unscheduled maintenance, and will promptly investigate any technical problems that you report to us.
15. **INDEMNITY** You, the Vendor, at no additional cost to the State, agree to indemnify, defend, and hold the State, its officers, employees, and Third-party Agents involved, directly or indirectly, in the delivery and operation of the Service, harmless from any and all liabilities and expenses, including, without limitation, attorney's fees,

expenses, costs, judgments, settlements, contract losses, or other costs arising out of or relating to (i) Vendor's misuse or modification of the MyFloridaMarketPlace Service or the State sites; (ii) the Vendor's distribution, marketing or use for the benefit of parties other than Vendor of the Service or the State sites; (iii) Product information, direction, specification or materials provided by Vendor; (iv) Vendor's transactions with Buyers; and (v) Vendor's breach of any of its representations, warranties, promises or obligations under this agreement. The foregoing indemnity is conditioned upon prompt written notice by the State of any claim, action or demand for which indemnity is claimed.

16. **DISCLAIMER OF WARRANTIES** You expressly understand and agree that:

- a. Your use of the Service is at your sole risk. The Service is provided on an "as is" and "as available" basis. The State expressly disclaims all warranties of any kind.
- b. The State makes no warranty that (i) the Service will meet your requirements; or (ii) the Service will be uninterrupted, timely, or error-free.
- c. Any material downloaded or otherwise obtained through the use of the Service is done at your own discretion and risk and you shall be solely responsible for any damage to your computer system or loss of data that results from the download of any such material.
- d. No advice or information, whether oral or written, obtained by you from the Service shall create any warranty.
- e. Each party warrants that (a) it is authorized, empowered, and able to enter into and fully perform its obligations under this Agreement; and (b) its performance of this Agreement, and the other party's exercise of such other party's rights under this Agreement, will not conflict with or result in a breach or violation of any of the terms or provisions or contribute a default under any agreement to which it is a party.

17. **MISCELLANEOUS** Any notice, report, approval or consent required or permitted hereunder shall be in writing. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. You may not assign or transfer this Agreement without the prior written consent of the State. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

18. **LIMITATION OF LIABILITY** You expressly understand and agree that the State, including its officers, employees, and Third-party Agents involved, directly or indirectly, in the delivery and operation of the Service, shall not be liable for any direct, indirect, incidental, special, consequential or punitive damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if the State has been advised of the possibility of such damages), resulting from: (i) the use or the inability to use the Service; (ii) unauthorized access to or alteration of your transmissions or data; (iii) statements or conduct of any third party on the Service; or (iv) any other matter relating to the Service.

19. **APPLICABLE LAW** The laws of the State of Florida, without regard to principles of conflict of laws, shall govern the TOU and any dispute between you and the State or

its Third-party Agents that might arise under or relate to the TOU. Any such dispute involving the State shall be resolved pursuant to Chapter 120 of the Florida Statutes, which provide an administrative remedy that you are required to pursue before seeking any other type of relief. Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to these Terms of Use or your use of the Services shall be the appropriate state court in Leon County, Florida.

20. RESERVATION The State reserves the right, without prior notice, to unilaterally make changes to the TOUs as necessary to conduct state business.

By clicking "I Accept" below, you agree to these Terms of Use.

[I Accept the Terms of Use.](#)

[I Decline the Terms of Use.](#)

Immediate acceptance of the Terms of Use is not necessary, and your data will be saved for you to return and complete registration at another time. However, your company is NOT registered with the State of Florida until the Terms of Use have been accepted.
