

## 2019-20 Purchase Order Terms and Conditions

Each party shall perform its obligations in accordance with the following listed terms and conditions for this Purchase Order (PO) or contract. Use the links provided for each topic to access and review full instructions. *Note: additional federal and state clauses (not included in these lists) are required for subrecipient POs, contracts or other agreements.*

### **Required clauses – all purchases of services and/or commodities**

- ☒ [Accessible Electronic Information Technology](#)
- ☒ [Certified Minority Business Enterprise \(CMBE\) reporting](#)
- ☒ [Conduct of business – federal/state laws govern](#)
- ☒ [Confidentiality and safeguarding information](#)
- ☒ [Conflict of interest/related party activities](#)
- ☒ [Convicted/discriminatory vendors](#)
- ☒ [Cooperation with ELC, OEL and OEL's Inspector General](#)
- ☒ [Filing and payment of taxes#](#)
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- ☒ [Insurance – ELC provided proof of coverage](#)
- ☒ [Insurance – errors and omissions](#)
- ☒ [Insurance – liability](#)
- ☒ [Mandatory reporting of fraud/criminal activity](#)
- ☒ [No contract services performed outside the USA](#)
- ☒ [No lobbying](#)
- ☒ [Notification of legal action](#)
- ☒ [Payment audit \(records of costs will be available upon request\)](#)
- ☒ [Payment and fees](#)
- ☒ [Payment made after written “agency” acceptance](#)
- ☒ [Payment timeframe - timely payments](#)
- ☒ [Procurement of recovered materials#](#)
- ☒ [Public records](#)
- ☒ [Public access/public records requests](#)
- ☒ [Public announcements, press releases, sponsorships](#)
- ☒ [Records retention](#)
- ☒ [Renegotiation due to changes in Federal or State law, rules or regulations](#)
- ☒ [Return of Funds](#)
- ☒ [Smoking prohibitions \(Pro Children Act of 2001\)](#)
- ☒ [Subpoenas](#)
- ☒ [Travel](#)
- ☒ [Unauthorized alien\(s\)](#)
- ☒ [Waiver](#)
- ☒ [Whistleblower's Act](#)

### **Additional required clauses for all purchases – triggered by a defined spending threshold**

- ☐ [Byrd Anti-Lobbying Certification#](#)
- ☐ [Clean Air and Federal Water Pollution Control Act#](#)
- ☐ [Contract Manager](#)
- ☐ [Termination for Cause \(breach of terms\)#](#)
- ☐ [Termination for Convenience#](#)

### **Additional clauses - purchases of services only – may also be triggered by spending threshold**

- ☐ [Background checks](#)
- ☐ [Contract Work Hours and Safety Standards Act#](#)
- ☐ [Copeland Anti-Kickback Act#](#)
- ☐ [Davis Bacon Act, as amended#](#)
- ☐ [Drug Free Workplace#](#)
- ☐ [Equal employment#](#)
- ☐ [E-Verify](#)
- ☐ [Independent Contractor](#)
- ☐ [Insurance – reemployment assistance \(aka unemployment compensation\)](#)
- ☐ [Insurance – workers' compensation](#)
- ☐ [Purchase of American-Made Equipment and Products#](#)

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*The party that executes a PO, contract or other agreement funded by federal or state grant program funds retains all responsibility for compliance with applicable laws, rules and regulations. Your entity should conduct research tasks to verify and/or supplement the listed PO/contract provisions.*

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### ☐ [Rights to Inventions](#)

#### **Additional clauses - purchases of services involving access to confidential data only**

- ☐ [Breach of security/confidentiality](#)
- ☐ [Information and data security requirements](#)
- ☐ [Information resource acquisition](#)
- ☐ [Prohibition of peripheral devices for confidential data storage](#)
- ☐ [Return or destruction of confidential data](#)

*#Provision is required for purchases funded with federal grant program monies*

#### **☒ [Accessible Electronic Information Technology](#)**

The Contractor hereby agrees that by entering into this PO/contract, Contractor will provide electronic and information technology resources in complete compliance with the Accessibility standards provided in [Rule 60-8.002](#), F.A.C. These standards establish a minimum level of accessibility. See s. 282.603, F.S.

The Contractor hereby agrees that by entering into this PO/contract, Contractor will, whenever practicable, collect, transmit and store PO, contract, program and project-related information in open and machine readable formats rather than in closed formats or on paper as provided in 2 CFR 200.335, *Methods for collection, transmission and storage of information*.

#### **☐ [Background checks](#)**

The ELC may require the Contractor and its employees, agents, representative and subcontractors to provide fingerprints and be subject to such background check as directed by the ELC. The cost of the background check(s) shall be borne by the Contractor. The ELC may require the Contractor to exclude the Contractor's employees, agents, representatives or subcontractors based on the background check results. Specific instructions are provided by the ELC in the scope of work based on the requirements of Sections 435.03 and 435.04, F.S.

#### **☐ [Breach of security/confidentiality](#)**

As defined in Chapter 282.0041, F.S., "Security Incident" means a violation of imminent threat of violation, whether such violation is accidental or deliberate, of information technology security policies, acceptable use policies or standard security practices. As imminent threat of violation refers to a situation in which the state agency has a factual basis for believing a specific event is about to occur.

As defined in Chapter 501.171, F.S., "Breach of Security" means unauthorized access of data containing personal information. Good faith access of personal information by an employee or agent of the ELC does not constitute a breach of security, provided the information is not used for a purpose unrelated to the agreement or subject to further unauthorized use.

As defined in Chapter 282.0041, F.S., "Breach" means a confirmed event that compromises the confidentiality, integrity, or availability of information or data.

The Contractor agrees to comply with s. [501.171](#), F.S. related to the security of confidential personal information and understands that the contractor for this purpose will be considered a third party agent as referenced in this statutory section.

The Contractor shall immediately notify the ELC's Contract Manager (or other listed contact person) in writing of any Security Incident, Breach or Breach of Security of which it becomes aware by its employees, subcontractors, agents or representatives. Notwithstanding requirements of s. 501.171(3), F.S., Contractor's notification shall be made in writing to the ELC within 24 hours after Contractor learns of the security incident or breach. Contractor's notification shall identify:

- (i) the nature of the unauthorized use or disclosure,
- (ii) the confidential information used or disclosed,
- (iii) who made the unauthorized use or received the unauthorized disclosure,
- (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and
- (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.

Contractor shall provide such other information, including a full written report, as reasonably requested by the ELC.

If the ELC, at its sole discretion, determines that the Contractor has failed to comply with any confidentiality provision of this PO/contract, or determines that prompt and satisfactory corrective action has not occurred, the ELC has the unilateral right to suspend the PO/contract until it is satisfied that corrective action has been taken or the ELC may terminate the PO/contract. If the contract is terminated, Contractor must immediately surrender to the ELC all confidential information and copies thereof obtained under the Contract and any other information relevant to the Contract.

The Contractor understands and agrees that all reasonable fees and costs necessary for the ELC to remedy any breach of confidentiality due to the conduct of the Contractor, its employees, subcontractors, agents, or affiliates, or any individual within the control of the Contractor, shall be the responsibility of the Contractor. The Contractor shall cooperate in the defense and settlement of such claims. The obligations of this section shall survive the expiration or termination of the PO/contract.

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The Contractor understands and agrees to the confidentiality and security provisions of this PO/contract regarding the requirements to safeguard the confidentiality of the information which is the subject of the PO/contract, and which is considered a material condition of the PO/contract. In the event that requirements to safeguard the information are impaired, that unauthorized disclosure of the information occurs, or the confidentiality of the information are compromised in any way, the Contractor will be subject to penalties as follows:

**Criminal Penalties:** The Contractor and any of its employees, agents, contractors, subcontractors, affiliates or any other individual that breaches the confidentiality requirements of the PO/contract are subject to any state or federal criminal sanctions provided by law. This includes, but not limited to penalties as provided for in s. [119.10](#), F.S., the Florida Computer Related Crimes Act ([chapter 815](#)) or any other applicable state or federal laws or regulations.

**Civil Remedies:** In addition to criminal sanctions, the Contractor and its employees, agents, contractors, subcontractors, affiliates or any other individual who breaches the confidentiality requirements of this PO/contract or applicable laws are subject to any and all civil remedies available to the ELC and the State of Florida.

☐ **Byrd Anti-Lobbying Certification** – *applies to purchases over \$100,000*

If this PO relies on federal funds, the Contractor must comply with federal laws that restrict lobbying including the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]). The Contractor shall also file the certification form required (see [ACF Certification regarding Lobbying](#)) by 49 CFR part 20, "New Restrictions on Lobbying."

Each tier (Contractor) certifies to the tier above (ELC) that it will not and has not used the PO/contract funds to pay for any federal-level lobbying activities. Prohibited activities include any person or organization paid for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with respect to this PO/contract. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

☒ **Certified Minority Business Enterprises (CMBE) reporting**

The ELC is dedicated to supporting, tracking and increasing its small minority business enterprise spending as s. 287.0943, F.S. requires. The Contractor shall report spending with these subcontractors with each invoice submitted for payment to the following address, with a copy to the ELC Contract Manager.

*lgoettsche@elcalachua.org*

☐ **Clean Air and Federal Water Pollution Control Act** – *applies to purchases over \$150,000*

Pursuant to the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended, the Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended and the Federal Water Pollution Control Act. Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

☒ **Conduct of business – federal/state laws govern**

The laws of the State of Florida shall govern the PO. Each party shall perform its obligations herein in accordance with the terms and conditions of this PO/contract. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action or dispute related to the PO. Further, the Contractor hereby waives any and all privileges and rights relating to the venue it may have under any other statute, rule or case law, including, but not limited to those based on convenience. The Contractor hereby submits to the venue in the county chosen by the ELC.

If there is any conflict in the provisions set forth in applicable federal and state laws, the conflict will be resolved in the following priority (highest to lowest).

1. Federal law and regulations
2. Florida laws and rules
3. Special conditions/additional requirements
4. PO/Contract Scope of Work

☒ **Confidentiality and safeguarding information**

Chapter 119, F.S. instructs the Contractor shall not disclose public records that are exempt or confidential/exempt from public records disclosure requirements except as authorized by federal and state laws, including but not limited to sections 1002.72, 1002.97, F.S. and 2 CFR 200.82, *Protected Personally Identifiable Information (PPII)*. The ELC provided additional specific instructions to the Contractor if applicable.

☐ **Conflict of interest/prior approval of related party activities** – *for purchases ≥ \$25,000*

Section 1002.84(20), F.S. prohibits ELCs (or an ELC's subrecipient) from entering into contracts with employees, governing board members, or relatives of either group without prior approval from the Office of Early Learning and a valid vote of approval by two-thirds of the ELC's governing board (or the governing board of an ELC's subrecipient). Impacted employees/board members must disclose this conflict of interest in advance of the board's vote and impacted governing board members must abstain from the voting process.

☒ **Conflict of interest/disclosure of related party activities** – *applies to purchases under \$25,000*

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Section 1002.84(20), F.S. requires ELCs (or an ELC's subrecipient) entering into contracts with employees, governing board members, or relatives of either group to disclose this activity to the Office of Early Learning after a valid vote of approval by two-thirds of the ELC's governing board (or the governing board of an ELC's subrecipient). Impacted employees/board members must disclose this conflict of interest in advance of the board's vote and impacted governing board members must abstain from the voting process.

☐ **Contract Manager** – *applies to purchases of \$100,000 or more*

A contract manager may be required for POs/contracts that receive \$100,000 or more from the ELC. Contact information provided by the ELC if applicable as required by Section 287.057(14)(b), F.S.

☐ **Contract Work Hours and Safety Standards Act** – *applies to purchases of \$100,000 or more*

If this PO relies on federal funds, the Contractor must comply with federal labor laws including the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). These requirements apply to agreements that include salaries for laborers and for all contracts for repairs, improvements or other construction activities. The Contractor and any subcontractors shall compute wages on a 40-hour week schedule and pay employees for extra hours worked. None shall be forced to work in unsanitary, hazardous or dangerous conditions or surroundings.

☒ **Convicted/discriminatory vendors**

Neither it, nor any person or affiliate of the vendor convicted of a public entity crime as defined in Sections 287.133 and 287.134, F.S. and placed on the convicted or discriminatory vendor list at the federal or state levels can perform work for or provide services to the ELC.

☒ **Cooperation with the ELC, OEL and OEL's Inspector General**

Pursuant to s. 20.055(5), F.S., the Contractor and any subcontractor(s) used to provide the scoped goods/services understand and will comply with their duty to cooperate in good faith with any reasonable requests from the ELC or State officials to discuss, review, inspect or audit Contractor performance and compliance under this PO or contract. Upon request, the Contractor shall grant access to all records pertaining to the Contract to the ELC, OEL, OEL's Inspector General, OEL's General Counsel, the Office of Program Policy and Government Accountability, and Florida's Chief Financial Officer. The Contractor shall provide any type of information 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 PO/contract. The Contractor shall retain such records for five (5) years after the expiration date of the PO/contract, or the period required by the General Records Schedules maintained by the Florida Department of State (available at <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>), whichever is longer.

The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the ELC which result 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.

☐ **Copeland Anti-Kickback Act** – *applies to purchases of \$2,000 or more*

If this PO relies on federal funds, the Contractor must comply with federal labor laws including the Copeland Anti-Kickback Act (18 U.S.C. 874 and 40 U.S.C. 276c). These requirements apply to agreements that include salaries for laborers and for all contracts for repairs, improvements or other construction activities. The Contractor and any subcontractors is prohibited from inducing, by any means, any person employed in the construction, completion or repair of work, to give up any part of the compensation to which he/she is otherwise entitled. The Contractor shall report all suspected or reported violations to the ELC.

☐ **Davis Bacon Act, as amended** – *applies to purchases of \$2,000 or more*

If this PO relies on federal funds, the Contractor must comply with federal labor laws including the Davis-Bacon Act (40 U.S.C. 276a, et. seq.), as supplemented by USDOL regulations (29 CFR Part 5).

- Under this Act, contractors must to pay wages to laborers and mechanics at a rate not less than the locally prevailing minimum wages and fringe benefits for similar work projects in the area.
- Contractors are required to pay wages not less than once a week.
- Contractors are required to post/display the applicable wage determination(s) at the site of work in a location in clear view of everyone.
- USDOL determines and sets the prevailing wage rates.
- The Contractor shall report all suspected or reporting violations to USDOL.

☒ **Debarment and suspension**

If this PO relies on federal funds, in accordance with Federal Executive Order 12549 and 2 CFR Part 376 regarding Debarment and Suspension, the Contractor shall agree and certifies that neither it, nor its principals, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. Contractor also agrees it shall not knowingly enter into any lower tier contract or other covered transaction with a person who is similarly debarred or suspended from participating in the PO's scoped transaction(s).

☐ **Drug Free Workplace** – *applies to purchases of services of more than \$100,000*

If this PO/contract relies on federal funds, pursuant to the Drug-Free Workplace Act of 1988, the Contractor attests and certifies that the Contractor will provide a drug-free workplace compliant with 41 USC 81. This requirement applies to the purchase of services performed in part or entirely in the United States. This requirement will not apply to purchases of commercial goods.

Additional online instructions to determine coverage for a specific contract or grant are available by contacting USDOL. See [USDOL drug-free workplace advisor](#)

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☒ **Equal Employment** – *applies to all purchases of services per OEL instructions*

This contractor (and subcontractor(s)) shall abide by the requirements of implementing regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor. See USDOL\_OFCCP for more details. These federal 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 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, disability or veteran status.

☒ **E-Verify** – *applies to all purchases of services per OEL instructions*

In accordance with Executive Order 11-116, the Contractor agrees to utilize the U.S. Agency of Homeland Security’s E-Verify system, <https://www.uscis.gov/e-verify>, to verify the employment eligibility of all new employees hired during the term of the PO for the services specified. The Contractor shall also include a requirement in subcontracts that the subcontractor(s) shall utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the PO term.

☒ **Filing and payment of taxes**

In accordance with Section 745 of the “Consolidated Appropriations Act, 2016,” (Title VII, General Provisions – Government-Wide), none of the federal/state grant funds made available to the ELC may be used to enter into a PO/contract or any other agreement with any corporation that has any unpaid Federal tax liability. Acceptance of these PO/contract terms indicates the Contractor is aware of and currently complies with requirements for full and timely payment of any federal taxes.

☒ **Final invoice**

The Contractor shall submit the Final invoice for payment to the ELC no more than 45 days after the PO/contract ends or is terminated. If the Contractor fails to do so, unless waived in writing by the ELC, all rights to payment are forfeited and the ELC will not honor any requests submitted after the above 45-day time period. Any payment due under the terms of this PO/contract may be withheld until all reports due from the Contractor and any necessary adjustment(s) thereto have been approved by the ELC.

☒ **Financial consequences**

Section 215.971(1)(c), F.S. requires inclusion of financial consequences in the event of a Contractor’s failure to perform the scoped transaction(s). If the Contract fails to meet and comply with the deliverables established in this PO/contract, the ELC will prorate any payments pending and/or request a refund of payment in a proportionate amount equal to the goods/services not received.

The ELC, at its sole discretion, may offer the Contractor an extension for any listed task, timeline or deliverable during which the indicated financial consequences shall not apply. Notification of any extension shall be provided to the Contractor in writing.

Any payment made in reliance on the Contractor’s evidence of performance, which evidence is subsequently determined to be erroneous, will be immediately due to the ELC as an overpayment to the extent of such error.

☒ **Florida Abuse Hotline reporting**

Any employee of the Contractor shall comply with s. 39.201, F.S., and immediately report any knowledge or suspicion that a child is abused, abandoned, or neglected by any person responsible for that child’s welfare. Contact the Florida Abuse Hotline (1-800-96ABUSE).

☒ **Funding availability/annual appropriation**

Pursuant to Section 287.0582, F.S., the ELC’s performance and obligation to pay under this PO is contingent upon an annual appropriation by the Legislature. In the event funds become unavailable, are withdrawn or redirected by federal/state program funders, the ELC may terminate the PO upon no less than twenty-four (24) hours written notice to the Contractor. In the event the PO is terminated for lack of funding, the ELC shall pay the Contractor for documented and verifiable costs reasonably incurred to the extent such funds are appropriated and available for the PO’s scoped transaction(s). The ELC shall be the final authority as to the availability of appropriated funds.

☐ **Independent Contractor**

The Contractor and its employees, agents, representatives, and subcontractors are not employees or agents of the ELC. The ELC is not bound by any acts or conduct of the Contractor or its employees, agents, representatives, or subcontractors. The Contractor agrees to include this provision in all of its subcontracts under this PO/contract.

☐ **Information and data security requirements**

The Contractor must comply with the ELC’s Information Technology (IT) Security policies (**provided separately**), the Office of Early Learning’s Information Technology Security Manual (**provided separately**), [Rule Chapter 74-2, F.A.C., Florida Cybersecurity Standards](#), and employ adequate security measures to protect the ELC’s information, applications, data, resources, and services.

The ELC’s IT Security policies are hereby adopted and incorporated by reference as if fully set out herein.

☐ **Information resource acquisition**

The Contractor shall obtain prior written approval from the ELC Contract Manager (or other listed contact person) for the purchase of any Information Technology Resource (ITR) using funds from this contract. The Contractor agrees to secure said prior approval by means of an Information Resource Acquisition (IRA) form, available from the ELC.

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### ☒ **Insurance – ELC provided proof of coverage**

All insurance policies shall be with insurers qualified and doing business in Florida. The ELC shall be furnished proof of coverage of insurance by standard ACORD form certificates of insurance accompanying the PO/contract documents. The OEL shall be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor.

### ☒ **Insurance – errors and omissions policy**

The Contractor shall obtain and keep in force during the life of the PO/contract, Errors and Omissions Insurance. Such insurance shall indemnify and pay on behalf of the Contractor for direct loss incurred due to human error, computer error, machine error, or equipment problems, whether caused by negligence, error, omission or mistake by the Contractor, subcontractor, any employee, officers or agents thereof. Errors and Omission Insurance coverage shall not limit any liabilities or any other obligations that the Contractor has under the PO/contract.

### ☒ **Insurance – liability policy**

The Contractor shall maintain adequate liability insurance coverage on a comprehensive basis and hold such liability insurance at all times during the existence of the Contract and any renewal(s) and extension(s) of it. By execution of the PO/contract, unless it is a State agency or subdivision as defined by subsection 768.28(2), F.S., the Contractor accepts full responsibility for identifying and determining the type(s) and extent of liability insurance necessary to provide reasonable financial protections for the Contractor and ELC clients served under the contract. A self-insurance program established and operating under the laws of the State may provide such coverage.

### ☐ **Insurance – reemployment assistance (aka unemployment compensation)**

The Contractor, during the life of the PO/contract, must comply with the reporting and contribution payments required under [Chapter 443](#), Florida Statutes, for all employees connected with the work of the PO/contract.

### ☐ **Insurance – workers' compensation**

During the PO/contract term, the Contractor, at its sole expense shall provide workers' compensation insurance in accordance with [Chapter 440](#), Florida Statutes, with such terms and limits as may be reasonably associated with the PO/contract with minimum employer's liability limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. The policy shall cover all employees engaged in any PO/contract work. Employers who have employees engaged in work in Florida must use Florida rates, rules and classifications for those employees.

### ☒ **Mandatory reporting of fraud/criminal activity**

The Contractor shall report to the ELC's Contract Manager (or other listed contact person) within twenty-four (24) chronological hours all suspected or known instances of Contractor's operational fraud or criminal activities relating to the PO/contract.

In accordance with 45 CFR 75.113 (also 2 CFR 200.313), *Mandatory disclosures*, the Contractor and its approved subcontractors must disclose in a timely manner and in writing to the ELC all violations involving fraud, bribery or gratuity violations potentially affecting this PO/Contract and/or the related federal/grant program(s). The ELC is required to review and consider any publicly available information about the Contractor in the Federal Awardee Performance and Integrity Information System (FAPIS) <https://fapis.gov>.

### ☒ **No contact services performed outside the USA**

The Contractor and its subcontractors and agents are prohibited from (i) performing any of the PO/Contract services outside the United States, or (ii) sending, transmitting or accessing any School Readiness Program or Voluntary Prekindergarten Education Program or other program-related data pursuant to this PO/contract outside of the United States unless approved by the ELC in writing. The Parties agree that a violation of this provision will:

- Entitle the ELC to immediately terminate the PO/contract for cause upon email notice to the Contractor's Contract Manager.
- Result in immediate and irreparable harm to the ELC, entitling the ELC to immediate injunctive relief.
- Entitle the ELC to recover damages for the breach. These damages will include all reasonable costs incurred by the ELC for investigations, forensic investigations, data recoveries, notifications and remediation.

### ☒ **No lobbying**

In accordance with sections 11.062 and 216.347, F.S., no funds from the PO/contract may be used for lobbying the state Legislature, the judicial branch or any state Agency. Acceptance of these PO/contract terms indicates the Contractor is aware of and currently complies with the described lobbying activity restrictions. The Contractor shall require all subcontracts include this certification language, which is a material representation of fact upon which the parties placed reliance when they made or entered into this transaction.

### ☒ **Notification of legal action**

The Contractor shall notify the ELC of legal actions taken against it or potential actions, such as lawsuits, related to goods/services provided through this PO/contract or that may affect the Contractor's ability to deliver the contractual goods/services, or adversely impact the ELC. The ELC's Contract Manager (or other listed contact person) will be notified in writing within twenty-four (24) continuous hours of Contractor becoming aware of such actions or from the day of the legal filing, whichever comes first.

### ☒ **Payment audit (records of costs will be available upon request)**

Records of costs incurred under terms of the PO shall be maintained and made available to the ELC upon request at all times during the period of the PO, and for a period of five years thereafter. Records of costs incurred shall include the Contractor's general accounting records, together with supporting documents and records of the Contractor and all subcontractors performing work, and all other records of the Contractor and subcontractors considered necessary by the ELC for audit.

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### ☒ **Payment and fees**

The ELC shall not be obligated to pay for costs incurred related to the PO/contract prior to its effective date or after the ending date specified.

### ☒ **Payment made after written “agency” acceptance**

The Contractor will be paid upon submission of properly certified invoice(s) to the ELC after delivery and acceptance of commodities or contractual services is confirmed in writing by the ELC. Invoices shall contain sufficient detail for audit thereof and shall contain the PO and the Contractor’s Federal Employer Identification Number or Social Security Number.

### ☒ **Payment timeframe - timely payments**

Section 215.422, F.S., provides that entities have five (5) working days to inspect and approve commodities or contractual services. Items may be tested for compliance with specifications. Items delivered not conforming to specifications may be rejected and returned at the Contractor’s expense. Interest penalties for late payment are also provided for in section 215.422, F.S. A Vendor Ombudsman, whose duties include acting as an advocate for vendors who may be experiencing problems obtaining timely payments from an entity may be contacted at 850-413-5516, or vendors may call the State Comptroller’s Hotline at 1-800-848-3792.

### ☒ **Procurement of recovered materials – applies to all purchases**

In accordance with federal regulations (2 CFR 200.317 / 200.322) and state law (see s. 403.7065, F.S.), the Contractor is required (to the maximum extent possible) to procure products or materials with recycled content when the FL Department of Management Services determines such products/materials are available. “Recycled content” means materials that have been recycled that are contained in the products or materials purchased, including but not limited to, paper, aluminum steel, plastic, glass and composted material.

### ☐ **Prohibition of peripheral devices for confidential data storage**

The Contractor, its employees, subcontractors, agents, or any other individuals to whom the Contractor exposes confidential information obtained under the PO/contract, shall not store, or allow to be stored, any confidential information on any portable storage media (e.g., laptops, thumb drives, hard drives, etc.) or peripheral device with the capacity to hold information without encryption software installed. Any peripheral devices used must meet the standards prescribed in the National Institute of Standards and Technology Special Publication 800-111 <http://csrc.nist.gov/publications/nistpubs/800-111/SP800-111.pdf>. Failure to strictly comply with this provision shall constitute a breach of the PO/contract.

### ☒ **Public announcements, press releases, sponsorships**

The ELC does not endorse any Contractor, commodity or service. The Contractor shall not provide any information to any media representative or any other external party regarding the PO/contract or any services delivered under the PO/contract without prior written approval from the ELC’s Public Information Office. The Contractor shall also notify the ELC’s Public Information Officer at 352-375-4110 verbally within one (1) hour and in writing, with a copy to the ELC’s Contract Manager (or other listed contact person), within one (1) business day of any inquiries received from any media outlet or representative. The Contractor shall not use the ELC’s logo(s) without the written approval of the ELC.

A sponsorship statement is required when issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money. This requirement applies to all States receiving Federal funds, including but not limited to State and local governments and contractors. The required sponsorship statement shall clearly state (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.” P. L. 103-333, the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 1995, § 508 – “Public Announcements and Press Releases”.

In addition, [s. 286.25, F.S.](#) requires an additional statement if the Contractor is a nongovernmental organization, which sponsors a program financed wholly or in part by state funds, including any funds obtained through this PO/contract. In publicizing, advertising, or describing the sponsorship of the program, the Contractor shall state: “Sponsored by (Contractor’s name), the Early Learning Coalition, and the State of Florida, Office of Early Learning.” If the sponsorship reference is in written material, the words “the Early Learning Coalition and State of Florida, Office of Early Learning” shall appear in the same size letters or type as the name of the Contractor/organization.

The Contractor is prohibited from using PO/contract information, sales values or sales volumes, or the ELC’s stakeholders or customers, in sales brochures or other promotions, including press releases, unless prior written approval is obtained from the ELC.

### ☒ **Public records**

If the vendor meets the definition of “Contractor” in Section 119.0701(1)(a), F.S., the Contractor shall comply with state public records requirements. All Contractor records for the scoped transaction(s) are available for public inspection unless expressly exempt from Sec 24(a) of the State Constitution and s. 119.07(1), F.S. The Contractor shall keep and maintain records ordinarily and necessarily required by the ELC to perform the scoped transaction(s) of this PO/ contract. Records subject to these rules include files that support all receipts and expenditure of contract funds. These files may include, but are not limited to, procurement responses/applications, contracts, agreements, financial reports, and supporting documentation for scoped services. Project/contract completion has not occurred until all reporting requirements are satisfied and final payments have been received/released.

The length of retention for these records in Florida is five years after the completion of the project, provided applicable audits have been released/closed. In no case will such records be disposed of before the five fiscal years minimum. Any of the records will be made available to the Office or its designees upon its request.

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*The party that executes a PO, contract or other agreement funded by federal or state grant program funds retains all responsibility for compliance with applicable laws, rules and regulations. Your entity should conduct research tasks to verify and/or supplement the listed PO/contract provisions.*

## 2019-20 Purchase Order Terms and Conditions

The PO/contract may be unilaterally canceled by the ELC for refusal by the Contractor to allow public access to records related to this PO/contract and/or for failure to keep and maintain records as described herein.

### ☒ **Public access/public records requests**

If a public records request is received, the Contractor must provide notice to the ELC within one (1) business day pursuant to Chapter 119, F.S. The Contractor shall email to the address shown a copy of all documents provided to the public records requestor by the end of the day such records are sent to the requestor.

**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 PO/CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT**

ELC of Alachua County  
Public Information Office  
Street address  
City, FL zip code  
352-375-4110  
kwilliams@elcalachua.org

### ☐ **Purchase of American-Made Equipment and Products**

The Contractor shall to the greatest extent practicable purchase all American made equipment and products with funds made available by this PO/contract. (P.L. 103-333, the USDOL, USDHHS, USDOE and Related Agencies Appropriations Act of 1995, section 507).

### ☒ **Records Retention**

The Contractor shall keep and maintain records ordinarily and necessarily required by the ELC to perform the scoped transaction(s) of this PO/contract. Records subject to these rules include files that support all receipts and expenditure of contract funds. These files may include, but are not limited to, procurement responses/applications, contracts, agreements, financial reports, and supporting documentation for scoped services. Project/contract completion has not occurred until all reporting requirements are satisfied and final payments have been received/released.

The length of retention for these records in Florida is five years after the completion of the project, provided applicable audits have been released/closed. In no case will such records be disposed of before the five fiscal years minimum. Any of the records will be made available to the Office or its designees upon its request.

The PO/contract may be unilaterally canceled by the ELC for failure or refusal by the Contractor to keep and maintain records as described herein.

### ☒ **Renegotiation due to Changes in Federal or State law, rules or regulations**

The Parties agree to negotiate changes to the PO/contract if Federal or State revisions of any applicable laws or regulations make changes in the PO/contract necessary.

### ☒ **Return of Funds**

The Contractor shall return to the ELC any overpayments disbursed to the Contractor by the ELC due to unearned funds or funds disallowed pursuant to the terms of the PO/contract. In the event the Contractor or its independent auditor discovers an overpayment was received, the Contractor shall repay said overpayment within forty (40) calendar days without prior notification from the ELC. In the event the ELC first discovers an overpayment was made, the ELC will notify the Contractor in writing of such occurrence. Should repayment not be made in a timely manner by the Contractor, the ELC shall be entitled to charge a lawful rate of interest on the outstanding balance beginning forty (40) calendar days after the date of notification or discovery. Refunds should be sent to the ELC's Contract Manager (or other listed contact person), and made payable to the ELC.

### ☐ **Return or destruction of confidential data**

Upon termination of the PO/contract for any reason, Contractor agrees to either return to the ELC or, if return is not feasible, to destroy all confidential information in whatever form or medium the Contractor received from or created on behalf of the ELC to include without limitation all backup tapes. This provision shall also apply to all confidential information in the possession of subcontractors or agents of the Contractor. In such case, Contractor shall retain no copies of such information, including any compilations derived from and allowing identification of confidential information. Contractor shall complete such return or destruction as promptly as possible, but not more than forty-five (45) calendar days after the effective date of the conclusion of the PO/contract. Within the forty-five (45) days, Contractor shall certify on oath in writing to the ELC that such return or destruction has been completed. If Contractor believes that ultimate destruction of the information is feasible but that to do so is not feasible or recommended to occur within the required forty-five (45) days, Contractor must contact the ELC's Contract Manager (or other listed contact person) and provide the basis for the delay. If the ELC's Contract Manager determines that it is in the best interest of the ELC to extend the time for return or destruction of the confidential data, the Contract Manager shall in writing notify the Contractor of the length of the extension and shall include the written notification in the ELC's official PO/contract file.

If Contractor believes that the return or destruction of confidential information is not feasible, Contractor shall provide in writing within forty-five (45) days, the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction is not feasible, Contractor shall continue the protections provided for in this PO/contract as long as Contractor maintains the confidential information.

### ☐ **Rights to Inventions**

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## 2019-20 Purchase Order Terms and Conditions

Pursuant to 2 CFR Part 200 Appendix II, item (F) and s. 286.021, F.S., if a discovery or invention arises or is developed in connection with the use of federal/state funds, the ELC will refer it to OEL and the Department of State to determine whether patent protection will be sought in the name of the state of Florida. Any and all patent rights accruing in connection with the performance of the PO/contract are hereby reserved to the state of Florida. The Contractor shall refer any such discovery to the ELC. In addition, the Contractor is subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements." See [Rights to Inventions](#) for complete details.

☒ **Smoking prohibitions (Pro Children Act of 2001)**

The Contractor certifies compliance with Title XX of Public Law 103-227, the Pro-Kids Act of 1994 (as amended by the Pro Children Act of 2001, 42 U.S.C. 7181 through 7184). Smoking is prohibited in any portion of facilities where federally funded children's services are provided or administered. Failure to comply with provision of this law may result in civil monetary penalty of up to \$1,000 per day.

☒ **Subpoenas**

The Contractor shall notify the ELC if any data related to the PO/contract is subpoenaed or used, copied or removed from the Contractor's possession by any individual not authorized by the ELC to use, copy or remove such data. The Contractor shall provide notice to the ELC verbally within twenty-four (24) chronological hours and in writing within seventy-two (72) chronological hours. The Contractor shall cooperate with the ELC in taking all steps as the ELC deems advisable to prevent misuse, regain possession of, and/or otherwise protect the ELC's and the State's rights and the data subject's privacy.

☐ **Termination for Cause (breach of terms)** – *applies for purchases over \$10,000*

Pursuant to 2 CFR Part 200 Appendix II, item (B), in the event of termination of the Contract by the ELC for cause or breach of listed terms and conditions, the Contractor shall be liable for the ELC's expenses for additional managerial and administrative services required to complete or obtain the services or items from another contractor.

☐ **Termination for Convenience** – *applies for purchases over \$10,000*

Pursuant to 2 CFR Part 200 Appendix II, item (B), the ELC, by written notice to the Contractor, may terminate the contract in whole or in part when the ELC determines in its sole discretion that it is in the state's best interest to do so. The Contractor shall not furnish any services after it receives notice of the termination, except as necessary to complete the continued portion, if any, of the PO/contract. The Contractor shall not be entitled to recover any cancellation charges or lost profit.

After receipt of a notice of termination, and except as otherwise specified by the ELC, the Contractor shall:

- Stop work under the PO/contract on the date of and to the extent specified in the notice.
- Complete performance of the work not terminated by the ELC.
- Take such action as may be necessary, or as the ELC may specify, to protect and preserve any property related to the PO/contract which is in the possession of the Contractor and in which the ELC has or may acquire an interest.
- Transfer, assign, and make available to the ELC all property and materials belonging to the ELC, upon the effective date of termination of the PO/contract. No extra compensation will be paid to the Contractor for its services in connection with such transfer or assignment.
- Meet all the public records law requirements specified under the Public Records sections of these terms and conditions.

☒ **Travel**

Travel expenses are reimbursed only if expressly authorized by the terms of the PO/contract. If authorized, submit bills for any travel expenses to the ELC in accordance with [s. 112.061](#), F.S. Only travel performed in connection with approved PO/contract activities are eligible for reimbursement. The ELC requires travel reimbursements be submitted within thirty (30) calendar days of the travel event.

☒ **Unauthorized alien(s)**

The Contractor agrees that unauthorized aliens shall not be employed. The ELC shall consider the employment of unauthorized aliens a violation of section 274A (e) of the Immigration and Nationality Act (8 U.S.C. 1342a). Such violation shall be cause for unilateral cancellation of the PO/contract by the ELC.

☒ **Waiver**

The delay or failure by the ELC to exercise or enforce any of its rights under the PO shall not constitute waiver of such rights.

☒ **Whistleblower's Act**

In accordance with [s. 112.3187](#), F.S., the Contractor and its subcontractors shall not retaliate against an employee for reporting violations of law, rule or regulation that creates and presents a substantial and specific danger to the public's health, safety, or welfare. Furthermore, agencies or independent contractors shall not retaliate against any person who discloses information to an appropriate agency alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of any agency, public officer or employee. The Contractor and any subcontractor(s) shall inform its employees that they and other persons may file a complaint with the Office of Chief Inspector General, the Office of Early Learning's Inspector General, the Florida Commission on Human Relations or the Whistleblower's Hotline number at 1-800-543-5353.

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