

AGREEMENT
FOR INFORMATION TECHNOLOGY CONSULTING SERVICES
(ADVANCED DATA SYSTEMS, INC.)

THIS AGREEMENT, entered into in duplicate as of January 16, 2014 (the "Effective Date"), by and between the CITY OF JACKSONVILLE, a municipal corporation existing under the laws of the State of Florida, ("CITY") and ADVANCED DATA SYSTEMS, INC., a Florida corporation with offices at 2868 Remington Green Circle, Tallahassee, FL 32308 ("ADS").

WHEREAS, the CITY has or is planning to purchase certain Enterprise Document Management Solutions Software (the "Software") from Hyland Software, Inc. and needs specialized IT consulting services to ensure that the Software is properly implemented and effectively used (the "Services"); and

WHEREAS, ADS is willing to provide the Services according to the terms set forth below.

NOW THEREFORE, in consideration of the premises and of the mutual covenants herein, and for other good and valuable consideration, the parties agree as follows:

1. **Incorporation of Recitals.** The above recitals are true and are incorporated herein.
2. **Scope of Services.** CITY hereby engages ADS and ADS hereby accepts said engagement for the purpose of providing the Services as described in:
 - (a) the Proposal dated November 4, 2013 for Services at the Duval County Tax Collector's Office, a copy of which is attached hereto as Exhibit A (the "Tax Collector Proposal"), and
 - (b) the Proposal dated December 20, 2013 for Services at the City of Jacksonville Office of General Counsel, a copy of which is attached hereto as Exhibit B (the "OGC Proposal").

Additional Services may be added to this Agreement by amendment.

3. **Supplemental Terms, Conditions and Specifications.** ADS acknowledges that the Services are comparable to those it has agreed to provide to the State of Florida under Contract #973-561-10-1 (the "State Contract"). The parties hereby agree to incorporate Sections 4, 5 and 6 of the State Contract (attached hereto as Exhibit C) as supplemental terms, conditions and specifications for this Agreement. For purposes of Exhibit C, the CITY shall be the "Customer" and ADS shall be the "Contractor." The parties agree that the following provisions in Exhibit C are inapplicable to this Agreement: 4.2, 4.14, 4.15, 4.27, 4.31, 5.2, 5.3, 5.7, 5.8, 5.10, 6.1 and 6.2.

4. **Payments for Services.** CITY will compensate ADS for the Services as set forth in Exhibits A and B, and any subsequent amendments hereto. Invoices shall be sent to the authorized CITY representative in accordance with CITY policies in effect at the time. Payment of the invoices

will be made by CITY in accordance with Section 215.422, Florida Statutes. CITY is not responsible for any travel or other out-of-pocket expenses of ADS other than those included in future Exhibits or Change Orders.

5. Term of Agreement. This initial term of this Agreement shall begin on the Effective Date and continue until September 30, 2014.

6. Maximum Indebtedness. The maximum indebtedness of CITY for all fees, reimbursable items or other costs, services and for the Services sold by ADS pursuant to this Agreement shall not exceed: (a) the sum of One Hundred, thirty-five thousand and ninety-nine DOLLARS (\$135,099.00), plus fees for CITY approved Change Orders for the Tax Collector Proposal, and (b) the sum of Eleven Thousand Three Hundred and Twenty-Eight DOLLARS (\$11,328.00), plus fees for CITY approved Change Orders for the OGC Proposal.

7. Notices. Notice to CITY under this Agreement shall be deemed delivered if sent by certified mail, return receipt requested, or by other delivery with receipt to:

Tom Ossi
Certified Contracts and License Manager
City of Jacksonville Information Technologies Division
214 N. Hogan Street, 9th Floor
Jacksonville, FL 32202
904.255.8080
tosi@coj.net

8. Laws, Ordinances, Rules and Regulations. As required by Section 126.108(b), Ordinance Code: In any sale or performance hereunder, ADS must comply with any and all applicable federal, state and local laws, rules, regulations and ordinances, as the same exist and may be amended from time to time. Such laws, rules, regulations and ordinances shall include, but are not limited to, Chapter 119, Florida Statutes, (the Florida Public Records Law) and Section 286.011, Florida Statutes, (the Florida Sunshine Law), as they apply to the purchase contemplated in this Agreement. If any of the obligations of this Agreement are to be performed by a subcontractor, ADS must ensure that the provisions of this Section shall be incorporated into and become a part of the subcontract.

9. Conflict of Interest. The parties will follow the provisions of Section 126.110, Ordinance Code with respect to required disclosures by public officials who have or acquire a financial interest in a bid or contract with CITY, to the extent the parties are aware of the same.

10. Non Discrimination. As required by Section 126.404, Ordinance Code: ADS represents that it has adopted and will maintain a policy of non discrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age or handicap, in all areas of employment relations, throughout the term of this Agreement. ADS agrees that, on written request, it will permit reasonable access to its records of employment, employment advertisement, application forms and other pertinent data and records, by the Executive Director of the Jacksonville Human Rights Commission, or successor agency or commission, for the purpose of

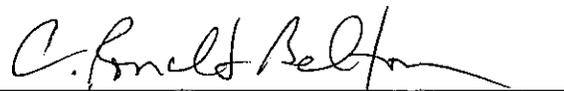
Encumbrance and funding information for internal City use:

Payment(s) by various subsequently issued Purchase Orders

Account Summary..... TCSG017 – 06403
..... OPIT536 – 069509- ITDS01 05
Total Contract Amount..... \$146,427.00

This above stated amount is the maximum fixed monetary amount of the foregoing contract. It shall not be encumbered by the foregoing contract. It shall be encumbered by one (1) or more subsequently issued Purchase Order(s) that must reference the foregoing Contract. All financial examinations and funds control checking will be made at the time such Purchase Order(s) are issued.

In accordance with Section 24.103(e), of the *Ordinance Code* of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing agreement; *provided however*, this certification is not nor shall it be interpreted as an encumbrance of funding under this Contract. Actual encumbrance[s] shall be made by subsequent purchase order[s], as specified in said Contract.



Director of Finance
City Contract # 8523-01



investigation to ascertain compliance with the nondiscrimination provisions of this Agreement; provided however, that ADS shall not be required to produce, for inspection, records covering periods of time more than one (1) year prior to the day and year first above written. ADS agrees that, if any of the services to be provided pursuant to this Agreement are to be performed by a subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

11. Order of Precedence. In the event of conflicting provisions in this Agreement, the following order of precedence shall apply: (i) Any amendment to this Agreement, (ii) the Scope of Services set forth in Exhibits A and B, (iii) the main body of this Agreement, and (iv) the supplemental terms, conditions and specifications set forth in Exhibit C.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

ATTEST:

City of Jacksonville

By James R. McCain
James R. McCain
Corporation Secretary



By Karen Bowling
Alvin Brown
Mayor

In compliance with the *Ordinance* of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered, and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement, and provision has been made for the payment of the monies provided therein to be paid from the following account:

By: See prior page
Director of Finance

Form Approved:

By: Jim Hoch
Office of General Counsel

Karen Bowling
Chief Administrative Officer
For: Mayor Alvin Brown
Under Authority of:
Executive Order No. 2013-04

WITNESS:

Advanced Data Systems, Inc.

By: Jeffrey L. McFarland

Print Name: JEFFREY L. MCFARLAND

By: Kathy O. Will

Print Name: Kathy O. Will

Title: President

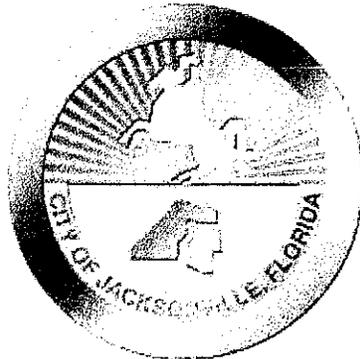
Exhibit A
Tax Collector Proposal



Implementation Services Proposal

**Presented to:
City of Jacksonville**

Tax Collector's Office



November 4, 2013

**Prepared by:
Nancy Ingle, Senior Account Manager
ningle@adv-data.net
Advanced Data Systems, Inc.
Jacksonville, FL
Phone: 904-721-3134, ext. 102
www.adv-data.net**

IMPLEMENTATION SERVICES

This quotation is being provided as a Fixed Price Project under the State of Florida Information and Technology Services contract number # 973-561-010-1. Implementation services for this project totals \$135,099.00 and is divided into three phases. Those phases are defined below with milestones billings shown for each phase.

Tax Division – Phase One

All implementation services required to implement the Tax Division to include: all Project Management to ensure a successful implementation; creation of detailed Statement of Work; creation of up to 6 Document Groups; creation of up to 48 Document Types; creation of up to 60 Keywords; installation of Unity Client Server; configuration of Document Import Processor; installation of Records Management; installation of workflow to work in conjunction with Records Management; creation of OnBase Folders; installation of up to 10 client workstations for retrieval and Office 2010 Integration; installation of Virtual Print Driver; installation of Application Enabler to enable Manatron, configuration of Manatron screen Account Status Inquiry, Account Maintenance tab and extract Account; configuration of Manatron screen Account Status Inquiry, Delinquent Tab and extract Account, Certificate Year and Certificate #; configuration of Manatron screen Business Tax, Business Tax Maintenance, Account Maintenance Tax tab and extract Account; configuration of Manatron screen Business Tax, Business Tax Maintenance tab, Account; configuration of Manatron screen Business Tax, Business Tax Maintenance tab, Account; configuration of Manatron screen Tourist Account, Master Maintenance Tab, Account; monitoring import of backfile DVDs; and 4 half-day training sessions at customer's location for end-users sessions with no more than 10 students per session.

PHASE ONE IMPLEMENTATION SERVICES

\$ 86,348.00

MILESTONE PHASE ONE BILLING:

Completion of Software Configuration excluding Records Management	\$ 52,148.00
Completion of Records Management Configuration	\$ 34,200.00

Branches – Phase Two

All implementation services required to implement the Branches to include: all Project Management to ensure a successful implementation; creation of detailed Statement of Work; installation and configuration of Rendition Services; installation and configuration of Import; installation and configuration of Quillix ADP module; creation and testing of 20 report templates for zonal OCR extraction; copy and modify 20 report templates for each Branch location with appropriate Branch location identifier; create profiles for Deposit; 1 day training for two half-day sessions not to exceed a total of 20 individuals.

PHASE TWO IMPLEMENTATION SERVICES **\$ 26,629.00**

MILESTONE PHASE TWO BILLING

Due upon completion of training **\$26,629.00**

Accounting Division – Phase Three

All implementation services required to implement the Accounting Division to include: all Project Management to ensure a successful implementation; creation of detailed Statement of Work; creation of up to 3 Document Groups; creation of up to 5 Document Types; creation of up to 15 Keywords; 1 day training for two half-day sessions not to exceed a total of 20 individuals.

TOTAL IMPLEMENTATION SERVICES **\$ 22,122.00**

MILESTONE THREE BILLING

Due upon completion of training **\$ 22,122.00**

PROJECT TOTALS

IMPLEMENTATION SERVICES **\$135,099.00**

GRAND TOTAL **\$135,099.00**

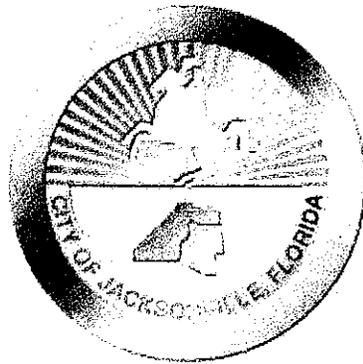
Exhibit B
OGC Proposal



Proposal

**Presented to:
City of Jacksonville**

**Information Technology Department
OFFICE OF THE GENERAL COUNSEL**



December 20, 2013

**Prepared by:
Nancy Ingle, Senior Account Manager
ningle@adv-data.net
Advanced Data Systems, Inc.
Jacksonville, FL
Phone: 904-721-3134, ext. 102
www.adv-data.net**

Advanced Data Systems, Inc. (ADS) has been requested by the Information Technology Department of the City of Jacksonville to provide a quotation to perform a Business Analysis Review for the Office of the General Counsel (OGC). During this analysis, ADSJ's Business Analyst will conduct in-depth meetings with representatives of OGC to develop an implementation plan to add OGC to the existing enterprise content management solution, OnBase, developed by Hyland Software, Inc. and the Quillix scanning solution developed by Prevalent Software, Inc. Upon determination of OGC's requirements a GAP analysis will be conducted to identify any additional software modules or programming to meet OGC imaging objectives. As a result of these meetings a detailed Scope of Services will be delivered which will include:

- Detailed Statement of Work outlining all Document Groups, Document Types and Keywords required for OnBase and identify required Quillix scanning profiles
- Implementation Plan
- Responsibilities of all parties
- Required OnBase and Quillix software
- Required hardware
- Implementation Services
- Training of users
- Define back file procedures

TOTAL SERVICES

\$ 11,328

This quotation is being provided as a Fixed Price Project under the State of Florida Information and Technology Services contract number # 973-561-010-1.

Assumptions:

General Assumptions

1. This project is quoted as an uninterrupted stream of activity. Deliverables defined within the Business Analysis Review are actual deliverables as defined above.
2. Activities conducted as part of this engagement will consist of both onsite and offsite activities.
3. Any documentation provided will use ADS's standard layout and approach. Any other documentation required may alter the estimate.
4. The ITD's staff, OGC Staff and ADS resources will be available for meetings and to provide support as needed.
5. Any delays to scheduled onsite work may result in a change order and additional charges.
6. Services provided in this quote do not include Project Management for implementation described in the delivered in Detailed Statement of Work.
7. The Detailed Statement of Work will reflect utilization of existing City of Jacksonville infrastructure and imaging software licensing to the maximum extent possible. Any new modules or programming will be actual requirements to deliver functionality desired by OGC.
8. The Detailed Statement of Work must be signed by an appropriate representative of OGC and ADS to conclude this engagement.

Exhibit C

Supplemental Terms, Conditions and Specifications

SECTION 4.0

GENERAL CONTRACT CONDITIONS, STATE OF FLORIDA FORM PUR 1000

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- 4.2 PURCHASE ORDERS**
- 4.3 PRODUCT VERSION**
- 4.4 PRICE CHANGES APPLICABLE ONLY TO TERM CONTRACTS**
- 4.5 ADDITIONAL QUANTITIES**
- 4.6 PACKAGING**
- 4.7 INSPECTION AT CONTRACTOR'S SITE**
- 4.8 SAFETY STANDARDS**
- 4.9 AMERICANS WITH DISABILITIES ACT**
- 4.10 LITERATURE**
- 4.11 TRANSPORTATION AND DELIVERY**
- 4.12 INSTALLATION**
- 4.13 RISK OF LOSS**
- 4.14 TRANSACTION FEE**
- 4.15 INVOICING AND PAYMENT**
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- 4.25 CHANGES**
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- 4.28 ADVERTISING
- 4.29 ASSIGNMENT
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- 4.41 PRODUCTS AVAILABLE FROM THE BLIND OR OTHER HANDICAPPED
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- 4.45 ANNUAL APPROPRIATIONS
- 4.46 EXECUTION IN COUNTERPARTS
- 4.47 SEVERABILITY

4.1 Definitions.

The definitions contained in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

- a. **“Contract”** means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.
- b. **“Customer”** means the State agency or other entity identified in a contract as the party to receive commodities or contractual services pursuant to a contract or that orders commodities or contractual services via purchase order or other contractual instrument from the Contractor under the Contract. The “Customer” may also be the “Buyer” as defined in the PUR 1001 if it meets the definition of both terms.
- c. **“Product”** means any deliverable under the Contract, which may include commodities, services, technology or software.
- d. **“Purchase order”** means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, contract or other authorized means).

4.2 Purchase Orders.

In contracts where commodities or services are ordered by the Customer via purchase order, Contractor shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract and solicitation terms and conditions. Any discrepancy between the 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 Customer. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(15) and (16) of the Florida Statutes.

4.3 Product Version.

Purchase orders shall be deemed to reference a manufacturer’s most recently release model or version of the product at the time of the order, unless the Customer specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.

4.4 Price Changes Applicable only to Term Contracts.

If this is a term contract for commodities or services, the following provisions apply.

(a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price

concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.

(b) Best Pricing Offer. During the Contract term, if the Customer 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 Customer 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 a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist 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 all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.

(d) Trade-In. Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.

(e) Equitable Adjustment. The Customer 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 source 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.

4.5 Additional Quantities.

For a period not exceeding ninety (90) days from the date of solicitation award, the Customer 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.

4.6 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 Customer's property.

- 4.7 Inspection at Contractor's Site.**
The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.
- 4.8 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.
- 4.9 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.
- 4.10 Literature.**
Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.
- 4.11 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 Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.
- 4.12 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 Contract or 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 Customers 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.

4.13 Risk of Loss.

Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer 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 Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

4.14 Transaction Fee.

The State of Florida has instituted MyFloridaMarketPlace, a statewide e-Procurement 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 reprourement 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.**

4.15 Invoicing and Payment.

Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. The State may require any other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract.

At the State's option, Contractors may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Contractor supply electronic invoices in lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to the Customer through the Ariba Supplier Network (ASN) in one of the following mechanisms – EDI 810, cXML, or web-based invoice entry within the ASN.

Payment shall be made in accordance with sections 215.422 and 287.0585 of the 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. Contractors may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State Agencies. The Customer is responsible for all payments under the Contract. A Customer'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 Department or to other Customers.

4.16 Taxes.

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

4.17 Governmental Restrictions.

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

4.18 Lobbying and Integrity.

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

meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://djis.dos.state.fl.us/barm/genschedules/gensched.htm>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

4.19 Indemnification.

The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and Customers, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors, provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or a Customer.

Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Customers from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to a Customer's misuse or modification of Contractor's products or a Customer's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the Contractor shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The customer shall not be liable for any royalties.

The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or Customer giving the Contractor (1) written

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

4.20 Limitation of Liability.

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

Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

4.21 Suspension of Work.

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

4.22 Termination for Convenience.

The Customer, by written notice to the Contractor, may terminate the Contract in whole or in part when the Customer determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.

4.23 Termination for Cause.

The Customer 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, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. 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 if the termination had been issued for the convenience of the Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract.

4.24 Force Majeure, Notice of Delay, and No Damages for Delay.

The Contractor shall not be responsible for 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 Customer 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 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 Customer. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer 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 Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment

to Customers 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 the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

4.25 Changes.

The Customer 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 Customer 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 Customer may solicit separate bids to satisfy them.

4.26 Renewal.

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

4.27 Purchase Order Duration.

Purchase orders issued pursuant to a state term or agency 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 state term or agency contract's term shall be considered void.

Purchase orders for a one-time delivery of commodities or performance of contractual services shall be valid through the performance by the Contractor, and all terms and conditions of the state term or agency 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 the state term or agency contract. For example, if a state term 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 state term contract, the Contractor will accept the order. However, if the Contractor expressly and in writing notifies the ordering office 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 state term 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 state term contract delivery schedule, or it shall be considered withdrawn.

The duration of purchase orders for recurring deliveries of commodities or performance of services shall not exceed the expiration of the state term or agency contract by more than twelve months. However, if an extended pricing plan offered in the state term or agency contract is selected by the ordering entity, 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 state term or agency contract shall apply to the recurring delivery/performance as provided herein, and shall survive the termination of the Contract.

Ordering offices shall not renew a purchase order issued pursuant to a state term or agency contract if the underlying contract expires prior to the effective date of the renewal.

4.28 Advertising.

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

4.29 Assignment.

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

4.30 Antitrust Assignment.

The Contractor and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida. Therefore, the contractor hereby assigns to the State of Florida any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.

4.31 Dispute Resolution.

Any dispute concerning performance of the Contract shall be decided by the Customer's designated contract manager, who shall reduce the decision to writing and serve a copy

on the Contractor. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, the Contractor files with the Customer a petition for administrative hearing. The Customer's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.

Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.

4.32 Employees, Subcontractors, and Agents.

All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Customer and shall comply with all controlling laws and regulations relevant to the services they are providing under the Contract. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work; change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

4.33 Security and Confidentiality.

The Contractor shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

- 4.34 Contractor Employees, Subcontractors, and Other Agents.**
The Customer and the State shall take all actions necessary to ensure that Contractor's employees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.
- 4.35 Insurance Requirements.**
During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. Upon request, the Contractor shall provide certificate of insurance. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.
- 4.36 Warranty of Authority.**
Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.
- 4.37 Warranty of Ability to Perform.**
The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.
- 4.38 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 Customer. 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.
- 4.39 Leases and Installment Purchases.**
Prior approval of the Chief Financial Officer (as defined in Section 17.001, F.S.) is required for State agencies to enter into or to extend any lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017 of the Florida Statutes.

- 4.40 Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).**
Section 946.515(2) F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles which are the subject of, or required to carry out, the Contract shall be purchased from the corporation identified under Chapter 946 of the Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of the Contract the person, firm, or other business entity carrying out the provisions of the Contract shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned." Additional information about PRIDE and the products it offers is available at <http://www.pride-enterprises.org/>
- 4.41 Products Available from the Blind or Other Handicapped.**
Section 413.036(3), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the Blind or for the Severely Handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in section 413.036(1) and (2), Florida Statutes; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the State agency insofar as dealings with such qualified nonprofit agency are concerned." Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.
- 4.42 Modification of Terms.**
The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Customer and the Contractor. No oral agreements or representations shall be valid or binding upon the Customer or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. The Customer's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.
- 4.43 Cooperative Purchasing.**
Pursuant to their own governing laws, and subject to the agreement of the Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-Customer purchases are independent of the agreement between Customer and Contractor, and Customer shall not be a party to any transaction between the Contractor and any other purchaser.

State agencies wishing to make purchases from this agreement are required to follow the provisions of s. 287.042(16)(a), F.S. This statute requires the Department of Management Services to determine that the requestor's use of the contract is cost-effective and in the best interest of the State.

4.44 Waiver.

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

4.45 Annual Appropriations.

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

4.46 Execution in Counterparts.

The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

4.47 Severability.

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

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SECTION 5.0
SPECIAL CONDITIONS

CONTENTS

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- 5.2 PURCHASE ORDERS**
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- 5.6 PERFORMANCE BOND**
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5.1 Definitions.

In case of conflict with Section 4.0 General Contract Conditions (PUR 1000), the definitions in this section will take precedence. The Department rules and definitions contained in Chapter 60A-1, F.A.C. shall also apply to this Contract. The following additional terms are also defined:

- a. "Contract" means the legally enforceable agreement, if any, that results from this solicitation. The parties to the Contract will be the Department and the Contractor. The Contract shall be reduced to writing substantially in the REQUIRED FORM included in Section 7.6 of the solicitation documents.
- b. "Contractor" means a successful bidder, who, along with the Department, will enter into the Contract.
- c. "Customer" means the State agencies and other eligible users that will order services from the Contractor under the Contract. By ordering products under the Contract, the Customer agrees to its terms. Customers are not, however, parties to the Contract.
- d. "Deliverable" is a specific service provided to the Customer, as detailed in a task order.
- e. "Department" means the State of Florida, Department of Management Services.
- f. "Purchase order" means the form or format used to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, or other authorized means).
- g. "Respondent" means the entity that submits the proposal materials in accordance with the instructions within this RFP. The "Respondent" may receive a Contract Award based upon the merits of the submittal. As such, the Respondent would then become a "Contractor" with oversight responsibility for any Teaming Partners (sub-contractors) submitted within the Respondent's proposal.
- h. "Services" means any deliverable or work performed under the Contract.
- i. "State" means the State of Florida and its agencies.

5.2 Purchase Orders.

A Customer shall order services by issuing a purchase order. Purchase orders, used in conjunction with a Task Order (Section 6.1), shall establish the specific deliverables, costs, payment schedules, start/completion dates, etc. for specific assignments. Purchase orders may vary from a simple staff augmentation request to a significant project with complex deliverables. It is the responsibility of the Customer to determine the appropriate scope of work for a purchase order.

In creating purchase orders, Customers are permitted to negotiate terms and conditions which supplement those contained in this Contract. Such additional terms shall not conflict with the terms and conditions established by this Contract (and any such conflicting terms shall be resolved in favor of terms most favorable to the Customer, as determined by the Department). Purchase order-specific terms and conditions are only applicable to that specific purchase order and shall not be construed as an amendment to this Contract.

In accepting a purchase order, the Contractor recognizes its responsibility for all tasks and deliverables contained therein, warrants that it has fully informed itself of all relevant factors affecting accomplishment of the tasks and deliverables and agrees to be fully accountable for the performance thereof. In addition, the Contractor assumes full responsibility for the acts of all subcontractors.

The Contractor shall provide all management, administrative, clerical, and supervisory functions required for the effective and efficient performance of all purchase orders it accepts, and shall have sole responsibility for the supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), worker's compensation, disability benefits and the like for its personnel. The Contractor is accountable to the Customer for the actions of its personnel. Each purchase order will name a Customer Contracting Officer; however, these Contracting Officers may be working members of teams and should not be expected to perform supervisory functions.

5.3 Electronic Invoicing.

Whenever possible, and notwithstanding any provision of the Contract, the Contractor shall supply electronic invoices in lieu of paper-based invoices for those transactions processed through the State's e-Procurement system. Electronic invoices shall be submitted to the agency through the Ariba Supplier Network (ASN) in one of the following mechanisms – cXML, EDI 810 or web-based invoice entry within the ASN.

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

5.4 Liquidated Damages.

If the Contractor fails to ensure that a qualified employee reports for work as specified herein and as specified on the Customer's purchase order (that has been accepted by the Contractor), in lieu of actual damages the customer may, at its option, elect to assess liquidated damages in the amount of \$250.00 per calendar day until the earlier of the date that:

- a. the Contractor provides a qualified employee;
- b. the Customer secures an employee elsewhere; or
- c. the Customer's need otherwise ceases.

Liquidated damages shall not be assessed if the Contractor provides the services as specified on the purchase order.

At the Customer's sole option, liquidated damages may be assessed in half-day (4 hour) increments of \$125.00.

5.5 Liability Insurance and Worker's Compensation.

Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. As specified in Section 4.35 (Insurance Requirements), during the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract.

The Contractor shall obtain and maintain Commercial General Liability insurance including products and completed operations, for the entire length of the Contract. This insurance will provide coverage for all claims that may arise from the operations completed under this Contract, whether such operations are by the Contractor, the Contractor's Teaming Partners, sub-contractors, Contractor's agents, or other employees. Such insurance shall include a Hold Harmless Agreement in favor of the State of Florida, Department of Management Services and must include the State of Florida as an Additional Named Insured for the entire length of the Contract.

The Contractor shall provide (and maintain for the length of the Contract) a current certificate of insurance to the Customer and/or the Division of State Purchasing.

For this Contract, the limits of coverage under each policy maintained by the Contractor shall be:

Liability Insurance.

Minimum Limits: \$1,000,000 Each Occurrence
\$2,000,000 Aggregate

Errors and Omissions Insurance

Minimum Limits \$1,000,000 Each Occurrence
\$2,000,000 Aggregate

Worker's Compensation: When required by Florida law, the Contractor shall obtain and maintain during the life of this Contract minimal employer's liability Worker's Compensation Insurance. For all of its employees working in connection with this Contract the amount of coverage shall be:

Minimum Employer's Liability Limits: \$100,000 each accident
\$500,000 policy limit
\$100,000 each employee

All insurance policies shall be through insurers authorized or eligible to write policies in Florida.

If, in the sole discretion of the Customer, liability insurance greater than that required herein to insure the project, scope of work, or other "Deliverables" is deemed necessary, the additional required insurance amounts should be detailed in the Task Order and payment of any additional charges may be negotiated between the Customer and Contractor.

5.6 Performance Bond.

If deemed necessary, the Customer may require the Contractor to furnish (without additional cost) a performance bond, a negotiable irrevocable letter of credit or other form of security for the faithful performance of work under a particular Task Order.

Determination of the appropriateness and amount of any bond requirement, is the sole responsibility, and at the sole discretion of the Customer.

5.7 Ongoing Performance Measures.

The State intends to use performance-reporting tools in order to measure the performance of Contractors. Such measures assist the Department in ensuring that Contractors provide the best possible value to the State and end users.

The State reserves the right to modify the forms and introduce additional performance-reporting tools as they are developed, including online tools (e.g. tools within MFMP or on the Department's website).

5.7.1 Contract Reporting Requirements.

The Contractor shall report sales data to the Contract Manager on a quarterly basis using the Contract Quarterly Reporting Form in Attachment II of this RFP.

The following data must be reported to the Contract Manager on a quarterly contract basis and shall include:

- Contractor's Name
- Contact Information
- Reporting Period
- Total sales of purchases per quarter as noted on the form.
- Total sales of purchases per quarter indicating project group, agency, OEU, etc.
- Total dollar value of purchases received using the State's Purchasing Card (by Agency, OEU).
- Minority Business Spend shall be included in the same report on the tab marked CMBE Spend Report (see Section 3.14, Diversity).

Failure to provide quarterly sales reports, within thirty (30) calendar days following the end of each quarter (January, April, July, and October) may result in the contract supplier being found in default and may cause termination of the contract.

Quarterly submissions of the Contract Reporting Form shall be the responsibility of the Contractor without prompting or notification by the Contract Manager. The Contractor shall submit the completed Contract Sales Summary report by email to the Contract Manager.

5.7.2 Business Review Meetings.

In order to maintain the partnership between the Department and the Contractor, each quarter the Department may request a business review meeting. The business review meeting may involve, but may not be limited to, the following:

- Review of Contractor performance
- Review of minimum required reports
- Review of continuous improvement plans

The Department encourages Contractors to help the State identify opportunities to lower costs. A continuous improvement effort, consisting of various ideas to enhance business efficiencies, may be discussed at the Business Review meetings or as identified.

5.8 Travel.

Expenses directly related to purchase orders such as travel and lodging, or materials and equipment specific to the purchase order shall not be built into the hourly Contract rate but must be accounted for separately.

Customer is not responsible for travel expenses unless he/she authorizes it at the time of issuing the purchase order.

If authorized, bills for any travel expenses shall be submitted in accordance with s. 112.061, F.S.

5.9 Rate Adjustments.

Rates may NOT be adjusted upward during the term of this Contract.

5.10 Contractor Additions / Reinstatements.

Once per year, at the Department's sole discretion, on or about the Contract anniversary date, the State may conduct a solicitation as provided in chapter 287, F.S. asking additional contractors to submit proposals that meet ALL of the requirements, Terms / Conditions of this RFP, and the resulting State Term Contract (STC).

New contractors will be evaluated in accordance with the original RFP. If it is determined by the Division of State Purchasing that ALL qualifying criteria have been met, the Contractor may be added to, or reinstated on, the STC.

5.11 Ownership of Products.

Unless otherwise agreed in writing, (i) all Products and Deliverables under the Contract shall belong exclusively to the Customer; (ii) all work performed under this agreement shall be considered "Made For Hire" for copyright purposes; and (iii) prior to accepting a Purchase Order, the Contractor will advise the Customer of any third party interests or restrictions affecting the Products or Deliverables under the Contract.

SECTION 6.0

TECHNICAL SPECIFICATIONS

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- 6.11 BACKGROUND CHECKS AND SCREENS**
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- 6.13 TASK ORDER TERMINATION**

6.1 Task Orders.

6.1.1 A Customer shall order services by issuing a Task Order. Task Orders should establish the specific deliverables, costs, payment schedules, start/completion dates, etc. for specific projects. Task Orders may vary from a simple staffing request to a significant project with complex deliverables. It is the responsibility of the Customer to determine the appropriate scope of work for a Task Order.

In creating Task Orders, Customers are permitted to negotiate terms and conditions which supplement those contained in this Contract. Such additional terms shall not conflict with the terms and conditions established by this Contract (and any such conflicting terms shall be resolved in favor of terms most favorable to the Customer, as determined by the Department). Task Order-specific terms and conditions are only applicable to that specific Task Order and shall not be construed as an amendment to this agreement.

Three (3) types of Task Orders may be issued hereunder:

(i) Time & Materials (T&M): Task Orders that may include standard staff augmentation services. A T&M Task Order should be used by a Customer to acquire services on the basis of (1) direct labor hours at specified fixed hourly rate not to exceed those in the Contract, and (2) materials at cost (permitted only when specifically detailed by the Customer in the Task Order). A typical staff augmentation Task Order is presumed not to include any additional materials costs, unless explicitly stated otherwise in the Task Order. These types of Task Orders place maximum risk on the Customer, therefore T&M Task Orders should be used only when it is not possible at the time of placing the order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

(ii) Fixed Price Project (FPP): Task Orders that provide for a firm price that is not subject to any adjustment on the basis of the Contractor's cost experience in performing the Services. This type of Task Order provides maximum incentive on the Contractor to contain costs and perform effectively.

(iii) Cost-Savings: Task Orders in which the Contractor receives no direct fee. In this type of Task Order, the Contractor is reimbursed solely for an agreed-upon portion of the savings realized by its performance of the Services. This type of Task Order requires careful "benchmarking" by the parties in order to properly calculate such savings.

6.1.2 Task Order Requirements. The following items are REQUIRED to be included in every Task Order issued by a Customer. All parties to a transaction are responsible for ensuring compliance with this section.

- **Contracting Officer:** Every Task Order must name a Customer Contracting Officer who shall be the main Customer point of contact for all issues related to the Services performed under that Task Order. The Customer's Contracting Officer is the only person authorized to make or approve any changes in the requirements of a Task Order. In the event the Contractor(s) makes any changes at the direction of any person other than the Contracting Officer, the change will be considered to have been without authority and no adjustment will be made in the Task Order price to cover any increase in costs occurred as a result thereof. The Customer's Contracting Officer is a single point of contact for the Contractor, and has the authority to obtain decisions on behalf of the Customer. The Contracting Officer will be responsible for the performance of the following functions, some of which may be delegated to other Customer staff:
 1. Provide a liaison between the Customer and the Contractor,
 2. Review, verify, and approve invoices from the Contractor,
 3. Resolve any contractual problems,
 4. Ensure the timely review by the Customer of all planning documents,
 5. Report on project progress to Customer management,
 6. Meet with the Contractor to convey information about schedule, timing and content of upcoming Deliverables, as well as raising problems and frustrations,
 7. Meet with the Contractor and inform Customer management on the Contractor's difficulties and frustrations,
 8. Facilitate resolution of problems,
 9. Functions as the source of all material sent to the Contractor,
 10. Receive all Deliverables from the Contractor,
 11. Archive all Deliverables received from the Contractor

- **Completion Dates:** For Fixed Price Projects, costs to the Customer for each Deliverable and the completion date must be agreed upon in the Task Order. The completion date shall be based on the Contractor's project plan and the Customer's needs. The Contractor shall complete each project within the agreed cost and by the estimated completion date, unless the completion date is properly modified.

6.1.3 Task Order Recommendations. Customers should consider the following items when creating a scope of work and its resulting Task Order. The items herein are not mandatory, but the Department strongly suggests that Customers (and Contractors) consider addressing these issues when relevant. This list includes, but is not limited to:

Americans with Disabilities Act (ADA) Civil Rights Compliance: Respondents submitting proposals for this project need to provide complete compliance with all Equal Accessibility laws, regulations and standards under Sections 251 & 255 of the Telecommunications Act of 1996, Titles I, II, III & IV of the Americans with Disabilities Act (ADA) [42 USC 12101 et seq.], and Sections 504 and 508 of the Federal Rehabilitation Act amendments [29 USC 794 et seq.], and the

Assistive Technology Act of 1998. These standards establish a minimum level of accessibility.

Vendors submitting proposals should review the above laws, regulations, and standards in detail to verify that the technologies they are proposing provide complete compliance. Vendors should provide written and signed certification to the Customer documenting compliance. Demonstration of these capabilities on the "working" system will be required by the Vendor before the Customer will accept the "system" and make related payments.

Technologies that are not accessible should be avoided unless there is significant and demonstrable need to use them. Since the courts have ruled against post-hoc accommodation (developing an alternative method of providing access to accommodate persons with disabilities), the agency needs to be careful approving technologies that cannot be certified by the vendor. If the manufacturer of the technology cannot demonstrate a compliant solution, they will be required to indemnify the customer against any litigation stemming from their lack of compliancy with the above laws, regulations and standards.

Inspection and Acceptance: If they desire, Customers may add specific information related to inspection and acceptance of services.

Liability Insurance: If, in the sole discretion of the Customer, liability insurance greater than that required by this Contract is necessary to insure the project, scope of work, or other Deliverables, the additional required insurance amounts should be detailed in the Task Order.

Performance Bond: The Customer, in its sole discretion, may require the Contractor to furnish without additional cost, a performance bond, a negotiable irrevocable letter of credit, or other form of security for the faithful performance of work under a particular Task Order. The appropriateness of this bond requirement, and the amount of such bond is the sole responsibility of the Customer.

Performance Management System: For Task Orders in Project Areas 1-3, the Department recommends that the Customer require Contractor to have a performance management system to track project cost, schedule, deviations, and status. Such systems should be similar to the earned value project management system that complies with the ANSI Standard on "Earned Value Management Systems Guidelines". Examples can be found at: <http://www.acq.osd.mil/pw/currentpolicy/currentpolicy.html>; and <http://www.whitehouse.gov/OMB/circulars/a11/cpgtoc.html>.

Task Order Termination for Cause: In addition to those reasons given in the Contract, the Customer may outline any additional actions or non-actions that may result in a "for-cause" termination of the relevant Task Order.

Task Order Changes: The Customer is responsible for ensuring that Task Orders specify the process for change order requests.

6.1.4 RFQ Requirements.

As noted in Section 1.1, Customers will create a scope of work each time they desire to solicit services pursuant to this Contract. The scope of work will be incorporated into a Task Order which will be issued to the selected Contractor.

The Task Order shall, in most cases, require a Request for Quote (RFQ) process. When required, the Customer shall issue RFQs to multiple Contractors before issuing any Task Order under this Contract per the following thresholds for Project Areas 1, 2, and 3. For Staff Augmentation, Customers may make a discretionary vendor selection at any threshold except above \$10,000,000 in total cost. The specific format of the RFQ is left to the discretion of the Customer's Contracting Officer. Pursuant to s. 287.056(3), F.S., RFQs performed within the scope of this Contract are not independent competitive solicitations and are not subject to the notice or challenge provisions of s. 120.57(3), F.S.

The Quotation Requirements for Task Orders are outlined in the table below:

Quotation Requirements	
\$0 – \$14,999	Agency adheres to internal policies and procedures.
\$15,000 - \$2,000,000	Agency solicits at least 3 quotes among Contract Vendors of its choice.
\$2,000,001 - \$5,000,000	Agency selects BEST RESPONSE to Statement of Work issued to at least 10 Contract Vendors of its choice.
\$5,000,001 - \$10,000,000	Agency selects BEST PROPOSAL submitted upon notification of ALL Contract Vendors within the appropriate Project Area(s).
Over \$10,000,000	RFP or ITN to Open Market not via this State Term Contract.

6.2 Ordering from Project Areas.

In order to determine an appropriate Contractor for any given Task Order, Customers should evaluate the type of services required (for a scope of work) and identify the matching Project Area.

The Customer shall issue the Task Order ONLY to a Contractor who has received an award in that Project Area. If a scope of work crosses multiple Project Areas, the Customer may issue a Task Order to a Contractor within any relevant Project Area. In such situations, the Customer is encouraged to identify the Project Area that is most critical to the overall success of the Customer's project.

Project Area 1 – Analysis and Design

Project Area 1 encompasses IT Planning, Studies, and Assessment to assist organizations in both information technology capital planning and assessment including, but not limited to, the following:

- Business case analysis (e.g. costs/benefit and risk analysis)
- Performance measurements

- Independent validation and verification of systems development
- Estimating return on investment and/or earned value
- Compliance with State interoperability standards as defined by the Agency for Enterprise Information Technology (AEIT).

Project Area 2 – Development and Integration

The services offered under this area include project management of systems development that organizations consider important. The services include, but are not limited to, the following:

- Management of systems integration
- System and software development
- Modernization of legacy systems to web enabled applications
- Software development, customization of commercial-off-the-shelf (COTS) software packages, and migration to modular applications
- Development and integration internet/intranet/web applications
- Development and integration of security, firewalls, and critical infrastructures
- Development, integration and implementation of the following:
 - Networks (e.g. LAN/WAN/MAN/ VoIP)
 - Data warehousing
 - Electronic Commerce/Electronic Data interchange
 - Groupware
 - Next generation internet
 - Client/Server computing
 - Workflow and imaging

Project Area 3 – Operational and Support

The services offered under this area include a broad range of IT related to Operations and Support Services. Anticipated services include, but are not limited to, the following:

- Management and support of Local Area Networks (LANs), Metropolitan Area Networks (MANs), Wide Area Networks (WANs), and VoIP Networks
- Computer systems administration, management and maintenance
- Data entry, data storage, data retrieval, and electronic records management
- Specialized workstation (i. e. CAD, CAD/CV, GIS) support
- Computer equipment maintenance (both on-going and on-call)
- Desktop support
- Production Support
- Database generation and database management
- Data and/or media management
- Document Imaging Services
- Disaster Recovery Services
- Orientation and training
- Information center/help desk

For Project Area 4, simple staff augmentation efforts, the Customer may issue the Task Order to a Contractor awarded in Project Areas 1, 2, 3, and/or 4.

6.3 Location of Services.

A Task Order may direct that services be performed at the Customer's location, or at a facility to be furnished by the Contractor. The Task Order may also indicate restrictions on the location of the Contractor's facility, such as "within sixty (60) minutes of the Customer's facility, or within thirty (30) miles of the Customer's facility", etc.

The Contractor's facilities must be able to support necessary Task Order requirements, including all equipment, supplies, and services needed by personnel to complete the services for the Customer. Customer-furnished items will be identified in individual Task Orders as appropriate.

The Contractor shall be responsible for transporting all Customer-furnished items between the Customer site and the Contractor's place of performance. Pickup and delivery of all materials shall be in accordance with the schedule defined for each specific Task Order.

6.4 Conflicts of Interest.

Task Orders issued under this Contract (especially work under Project Area 1) may provide the Contractor with access to advance information about future procurements. This information is not generally available to other persons or firms. In addition, the work may involve the definition of requirements for, or the preparation of specifications for, various systems, equipment, hardware, and/or software.

In order to prevent any bias, unfair competitive advantage, Customers and Contractors are encouraged to review s. 287.057(18), F.S. which provides: *"A person who receives a contract that has not been procured pursuant to subsections (1) through (5) to perform a feasibility study of the potential implementation of a subsequent contract, who participates in the drafting of a solicitation or who develops a program for future implementation, is not eligible to contract with the agency for any other contracts dealing with that specific subject matter, and any firm in which such person has any interest is not eligible to receive such contract. However, this prohibition does not prevent a vendor who responds to a request for information from being eligible to contract with an agency."*

6.5 Personnel Matters.

6.5.1 Professional Qualification Requirements. The Contractor shall supply personnel meeting the educational qualifications specified in the Job Title or a specific Task Order. The Customer may consider, on a case-by-case basis, acceptance of personnel whose degree does not fall within the fields specified. Work experience may be substituted for education, at the Customer's discretion.

6.5.2 Professionalism. Contractor's personnel shall adhere to the same professional and ethical standards of conduct required of State personnel. Contractor personnel shall not:

1. Discuss with unauthorized persons any information obtained in the performance of work under any Task Order not considered a public record pursuant to chapter 119, F.S.;
2. Conduct any business not directly related to the Task Order on Customer premises;
3. Use computer systems and/or other Customer facilities for company or personal business other than work related to the Task Order; or
4. Recruit personnel on Customer premises; or
5. Otherwise act to disrupt official Customer business.

6.5.3 Training. The Contractor shall provide fully trained and experienced personnel (including replacement personnel) required for performance of any work under Task Orders awarded. This includes training necessary for keeping personnel abreast of industry advances and for maintaining proficiency on equipment, computer languages, and computer operating systems that are available on the commercial market. Training of personnel shall be performed by the Contractor at its own expense except for the following:

1. When the Customer has given prior approval for training to meet special requirements that are unique to a particular Task Order.
2. Limited training of Contractor employee(s) may be authorized when the Customer changes the information technology hardware and/or software during performance of an on-going Task Order and it is determined to be in the best interest of the Customer.
3. Training for Contractor employees to attend seminars, symposia, or user group conferences when certified by the Contractor and the Customer's Contracting Officer that attendance is mandatory for the performance of Task Order requirements.
4. When training is authorized by the Customer under the conditions set forth above, the Customer will reimburse the Contractor for labor, tuition, and travel (if required) in accordance with the Task Order and s. 112.061, F.S.

6.5.4 Recruiting and Retention. For the purposes of this section only, the phrase "Task Order Personnel" is defined as any employee, Teaming Partner, subcontractor, consultant or other agent of an entity, whom the other entity becomes aware of due to the existence or performance of a particular Task Order.

Unless written authorization is received in advance, neither the Contractor nor the Customer shall attempt to recruit, hire, or otherwise contract with the Task Order Personnel of the other for the duration of the relevant Task Order and six (6) months after such Task Order's termination. The term "attempt to recruit" excludes (i) any broad-based effort to attract applicants if not specifically designed to attract the other's Task Order Personnel and (ii) any unsolicited inquiries made or applications submitted by one party's Task Order Personnel not at the instigation of the other party. Notwithstanding this prohibition, the State reserves the right to recruit, hire, or otherwise contract directly with any Task Order Personnel who have performed Services under this Contract for at least six (6) months.

6.5.5 Authority. Contractor personnel shall not hold themselves out to be representatives, in any capacity, of the Customer. In all communications with third parties, Contractor personnel shall identify themselves as such and specify the name of the Contractor.

In all communications with other Contractors in connection with a Task Order, the Contractor personnel shall state that he or she has no authority to change the Contract and that if the other Contractor believes a particular communication to be a direction to change the requirements of the Task Order, they should notify the Customer's Contracting Officer for that Task Order and not carry out the direction until a clarification has been issued by the Customer's Contracting Officer.

The Contractor shall ensure that all of its personnel are informed of the substance of this section, and the substance of this section shall be included in all subcontracts at any tier.

6.6 Software Documentation Requirements.

To the extent that any software is developed, modified, or otherwise procured under a Task Order, the Contractor is responsible for providing appropriate documentation, based on commercially-accepted software documentation standards. The Customer may address specific software documentation needs or standards in the appropriate Task Order.

6.7 Contractor Responsibilities.

In accepting a Task Order, the Contractor recognizes and accepts its responsibility for all tasks and Deliverables contained therein, warrants that it has fully informed itself of all relevant factors affecting accomplishment of the tasks and Deliverables and agrees to be fully accountable for the performance thereof. In addition, the Contractor assumes full responsibility for the acts of all subcontractors.

The Contractor shall provide all management, administrative, clerical, and supervisory functions required for the effective and efficient performance of all Task Orders it accepts, and shall have sole responsibility for the supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), worker's compensation, disability benefits and the like for its personnel. The Contractor is accountable to the Customer for the actions of its personnel. Each Task Order will name a Customer Contracting Officer; however, these Contracting Officers may be working members of teams and should not be expected to perform supervisory functions.

Contractor's management responsibilities include, but are not limited to, the following:

1. Ensure personnel understand the work to be performed on Task Orders to which they are assigned.
2. Ensure personnel know their management chain and adhere to Contractor policies and exhibit professional conduct to perform in the best interest of the Customer.
3. Ensure personnel adhere to applicable laws, regulations, and Contract conditions governing Contractor performance and relationships with the Customer.
4. Regularly assess personnel performance and provide feedback to improve overall task performance.
5. Ensure high quality results are achieved through task performance.

The Contractor shall not perform any inherently governmental actions under this Contract.

6.8 Other Contractors

6.8.1 Other Work. The Customer may undertake or award other contracts, Task Orders, or other arrangements for additional or related work to "Other Contractors". The Contractor shall reasonably cooperate with such other contractors and pertinent customer personnel. The Contractor shall not commit or permit any act that shall interfere with the performance of work by any other contractors or by customer personnel.

6.8.2 Transition of Work. The Contractor agrees to exercise its best efforts and cooperation to effect an orderly and efficient transition of any Task Order or other contract, project, or other agreement, if necessary. When appropriate, Task Order management personnel shall meet with a successor Contractor to coordinate Task Order transition. Discussions may include personnel transition to the successor Contractor or the transition of Task Order-specific items such as Customer or Contractor furnished supplies, materials, equipment, and services.

6.9 Treatment of Customer Assets.

Title to all property furnished by the Customer under this Contract or any Task Order shall remain with the Customer. Furthermore, the Contractor shall surrender to the Customer all property of the Customer prior to settlement upon completion, termination, or cancellation of any Task Order. Any property of the Customer furnished to the Contractor shall, unless otherwise provided herein or approved by the Customer, be used only for the performance of the Services.

6.10 Contractor Warranties.

The Contractor agrees to the following representations and warranties:

- **Repair of Damaged Data Warranty.** The Contractor represents that, should any defect or deficiency in any Deliverable, or the remedy of such defect or deficiency, cause incorrect data to be introduced into any Customer's database or cause data to be lost, the Contractor shall be required to correct and reconstruct, within the timeframe established by the Customer's Contracting Officer, all production, test, acceptance and training files or databases affected which are used in the provision of services, at no additional cost to the Customer.
- **Quality Assurance Warranty.** The Contractor represents that it will at all times use a formal software development process when the Services or Deliverables involve software modification or development.
- **Limitation of Warranty for Customer-Furnished Software** In lieu of any other warranty expressed or implied herein, the Customer warrants that any programming aids and software packages supplied for Contractor use as Customer-furnished property shall be suitable for their intended use on the system(s) for which designed. In the case of programming aids and software packages acquired by the Customer from a commercial source, such warranty is limited to that set forth in the contractual document covering the product(s).

Should Customer-furnished programming aids or software packages not be suitable for their intended use on the system(s) for which designed, except where such property is furnished "as is," the Contractor shall notify the Customer's Contracting Officer and supply documentation regarding any defects and their effect on progress on the Task Order. The Customer's Contracting Officer will consider equitably adjusting the delivery performance dates or Task Order price, or both, and any other contractual provision affected by the Customer-furnished property in accordance with the procedures provided for in the clause of this contract entitled "Changes".

6.11 Background Checks and Screens.

The Contractor shall provide information necessary for a Customer to perform criminal background checks or drug screening on employees; or, upon a Customer's request, and for an additional negotiated fee, perform the check or screening.

The Contractor shall grant a Customer's request to interview potential new employees, at the Contractor's expense.

6.12 Ongoing Performance Measures.

The State intends to use performance-reporting tools in order to measure the performance of Contractors. These tools will include the report forms contained in Attachment II. Such measures assist the Department in ensuring that Contractors provide the best possible value to the State and Customers. The State reserves the right to modify the forms and introduce additional performance-reporting tools as they are developed, including online tools (e.g. tools within MFMP or on the Department's website).

6.13 Task Order Termination.

Upon the termination of any Task Order or a portion thereof, the Customer may require the Contractor to deliver to the Customer any Deliverables specifically produced or acquired for the performance of such part of any Task Order. Customer shall pay the Contractor for Deliverables received and accepted by the Customer, however, in no event shall the Customer pay to the Contractor an amount greater than the Contractor would have been entitled to if the Task Order were not terminated.

After receipt of a notice of termination, and except as otherwise directed by the Customer, the Contractor shall stop performing services on the date, and to the extent specified, in the notice. The Contractor shall accept no further Task Orders for additional or other services related to the affected Task Order, and shall, as soon as practicable, but in no event longer than thirty (30) calendar days after termination, terminate any orders and/or subcontracts related to the terminated Task Order and settle all outstanding liabilities and all claims arising out of such termination of orders and/or subcontracts, with the approval or ratification of the Customer to the extent required, which approval or ratification shall be final for the purpose of this section.

The parties shall also settle any transfers of property which may have been required to be furnished to Customer or which otherwise belongs to the Customer; and Contractor shall

provide written certification to the Customer that the Contractor has surrendered to the Customer all said property.

The termination of a Task Order shall not affect the performance or quality of any other unrelated Task Order being performed by the Contractor for the same Customer or any other Customer.

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