

**ALTERNATE CONTRACT SOURCE NO. 52161500-ACS-16-1**  
**Audio Visual Equipment and Accessories**  
**Clear Touch Interactive, Inc.**  
**State of New York**  
**Contract No.: PC67435**

This Alternate Contract Source Agreement (ACS) is made and entered into as of February 19, 2017, by the State, Department of Management Services (Department) and Clear Touch Interactive, Inc. (Contractor).

**1. Authority**

1.1 The Department is authorized by subsection 287.042(16), Florida Statutes, "to evaluate contracts let by the Federal Government, another state, or a political subdivision for the provision of commodities and contract services, and, if it is determined in writing to be cost-effective and in the best interest of the state, to enter into a written agreement authorizing an agency to make purchases under such contract."

1.2 The State of New York competitively procured Audio Visual Equipment and Accessories, and awarded contract number PC67435 (Authorized Contract), incorporated by reference, to the Contractor. The Department evaluated the Authorized Contract, and hereby acknowledges that use of the Authorized Contract is cost-effective and in the best interest of the State.

1.3 The Department therefore enters into this ACS with the Contractor. The Parties agree as follows:

**2. Definitions**

2.1 ACS – The agreement between the Department and the Contractor, consisting of this document and documents listed below, by which the Contractor agrees to provide Audio Visual Equipment and Accessories to Customers under the terms and conditions contained in this document and the following documents:

2.1.1 The Authorized Contract, including attachments and amendments.

2.1.2 General Contract Conditions, incorporated by reference and attached to this ACS.

2.2 Agency – An entity within the executive branch of State government, as described in subsection 287.012(1), Florida Statutes.

2.3 Authorized Contract – the contract between the State of New York and Clear Touch Interactive, Inc. The Authorized Contract consists of the following documents:

A. Appendix A (January 2014), Standard Clauses for NYS Contracts (previously provided);

B. Contract Award Letter;

C. Revisions and Clarifications to Bid Specifications dated August 11, 2015, September 10, 2015, September 21, 2015, and September 29, 2015 (previously provided);

D. Invitation for Bids #22844 (Revised September 29, 2015) including all Appendices and Attachments referenced therein (previously provided);

E. Contractor's Bid Prices as stated in Attachment 1 – Pricelist; and

F. Contractor's Bid

All New York contract provisions relating to choice of law, venue, and jurisdiction shall not apply, and the laws of the State of Florida shall apply as more specifically set forth herein.

Where New York laws and regulations are cited, references shall be replaced with the correlated Florida state laws and regulations where the intent of the Parties will be maintained. When comparable Florida laws do not exist, the referenced New York laws and regulations will not apply.

2.4 Contractor – Clear Touch Interactive, Inc.

2.5 Customer – an Agency that procures Audio Visual Equipment and Accessories under the ACS.

2.6 State – the State of Florida.

2.7 Parties – the Department and the Contractor

### **3. Purpose and Scope of Use**

3.1 The Purpose of this ACS is to acquire Audio Visual Equipment and Accessories for use by Agencies.

3.2 Agencies (“Customers” or a “Customer”) may procure Audio Visual Equipment and Accessories under this ACS pursuant to the terms and conditions of the Authorized Contract, as modified and supplemented herein.

### **4. Term and Renewal**

4.1 Term: This ACS will be effective on February 19, 2017, and will have a term that is coterminous with the Authorized Contract. The Department may terminate this ACS in accordance with paragraphs 2.3.2 or 2.3.3 of the General Contract Conditions.

4.2 Renewal: This ACS will be automatically renewed at the time of any renewals to the Authorized Contract.

### **5. Authorized Contract Terms Expressly Incorporated into the ACS Agreement**

The following changes are modifying or supplementing the Authorized Contract terms and conditions.

(These modifications or additions apply only to actions and relationships within the Participating State of Florida.)

- A. Upon execution of this ACS, customers may purchase products and services under contract using the State of Florida alternate contract source number 52161500-ACS-16-1.

Customers acknowledge and agree to be bound by the terms and conditions of the Authorized Contract except as otherwise specified in this ACS.

- a. Contractor acknowledges that Participating State is an agency of the State of Florida and mandated by the State of Florida that every contract must include the list of terms and conditions stated in the General Contract Conditions.
- b. Discriminatory Vendors. A vendor placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with any public entity; or transact business with any public entity.

- c. Vendor Registration and Transaction Fees: In order to complete any transaction between an Individual Customer and the Contractor, the Contractor must be registered with the Department of State, Division of Corporations ([www.sunbiz.org](http://www.sunbiz.org)) and in [MyFloridaMarketPlace](#). Section 287.042(1)(h), Florida Statutes, and Rule 60A-1.031, Florida Administrative Code, is hereby incorporated by reference. All transactions are subject to a transaction fee pursuant to the rule.
- d. Purchases: In order to procure products and services hereunder, eligible users shall issue purchase orders or use a purchasing card which shall reference Florida alternate contract source number 52161500-ACS-16-1. Eligible users are responsible for reviewing the terms and conditions of this ACS including all Exhibits.
- e. Compliance with Laws: The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, Chapter 287 of the Florida Statutes and Rule 60A-1 of the Florida Administrative Code govern this ACS. By way of further non-exhaustive example, the Contractor shall comply with section 274A of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of any laws, rules, codes, ordinances, or licensing requirements shall be grounds for termination or nonrenewal of this ACS.
- f. Additional Eligible User Terms: If any additional ordinance, rule, or other local governmental authority requires additional contract language before an eligible user can make a purchase under this ACS, the eligible user is responsible for entering a separate agreement with the Contractor and capturing that additional contract language therein.
- g. Provisions of section 287.058, Florida Statutes: The provisions of section 287.058(1)(a)-(c) and (g), Florida Statutes, are hereby incorporated by reference.
- h. If, under this Contract, the Contractor is providing services and is acting on behalf of a public agency as provided by section 119.0701(2)(b), F.S., the Contractor shall:
  - (a) Keep and maintain public records required by the public agency to perform the service.
  - (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
  - (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
  - (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the

contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

(e) Public Records: IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CONTRACT MANAGER.

- i. The State of Florida's performance and obligation to pay under this ACS is contingent upon an annual appropriation by the Legislature. The vendor shall comply with section 11.062, Florida Statutes and section 216.347, Florida Statutes, prohibiting use of funds to lobby the Legislature, Judicial, or state agencies.
- B. Employment Eligibility Verification: Pursuant to State of Florida Executive Orders Nos.: 11-02 and 11-116, Contractor is required to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by the Contractor during the contract term. Also, Contractor shall require resellers/partners performing work or providing services under this ACS to utilize the E-Verify system to verify employment of all new employees hired by the reseller/partner during the ACS term.
- C. Contractor Pricing: Contractor pricing discounts for use by customers in procuring audio and video equipment and accessories under this ACS are posted on the State of Florida, Audio & Video Equipment and Accessories webpage at:  
[http://www.dms.myflorida.com/contract\\_search/\(contractType\)/4110](http://www.dms.myflorida.com/contract_search/(contractType)/4110)
- D. Preferred Pricing: The Contractor agrees to submit to the Department, at least annually, an affidavit from an authorized representative attesting that the Contractor is in compliance with the preferred pricing provision contained in paragraph 3.2 of the General Contract Conditions.
- E. Scrutinized Company List: In executing this ACS, Contractor certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List, created pursuant to sections 215.473, and 215.4725, Florida Statutes, respectively. Pursuant to subsection 287.135(5), Florida Statutes, Contractor agrees the Participating State may immediately terminate this ACS for cause if the Contractor is found to have submitted a false certification or if Contractor is placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, during the term of the ACS.
- F. Orders: Any Order placed by eligible users for a product and/or service available from the Authorized Contract shall be deemed to be a sale under and governed by the prices and other terms and conditions of the Authorized Contract and this ACS.  
  
Contractor must be able to accept purchase orders via fax, e-mail, or the MyFloridaMarketPlace (MFMP).
- G. Electronic Invoicing: The Contractor may supply electronic invoices in lieu of paper-

based invoices for those transactions processed through MFMP. Electronic invoices may be submitted to the agency through one of the mechanisms as listed below:

a. EDI (Electronic Data Interchange)

This standard establishes the data contents of the Invoice Transaction Set (810) for use within the context of an Electronic Data Interchange (EDI) environment. This transaction set can be used for invoicing via the Ariba Network (AN) for catalog and non-catalog goods and services.

b. PO Flip via AN

The online process allows Contractors to submit invoices via the AN for catalog and non-catalog goods and services. Contractors have the ability to create an invoice directly from their Inbox in their AN account by simply "flipping" the PO into an invoice. This option does not require any special software or technical capabilities.

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.

The Contractor will work with the MFMP management team to obtain specific requirements for the electronic invoicing if needed.

- H. Contract Quarterly Reports: The Contractor shall submit a Quarterly Report electronically to the Participating State/Entity within 30 days of the end of the quarter. The Participating State/Entity reserves the right to require the Contractor to provide additional reports within 30 days written notice as mutually agreed to by the parties. Failure to provide the Quarterly Report or other reports requested by the Participating State/Entity may result in the Contractor being found in default and may result in termination of this ACS.

Sales will be reviewed on a quarterly basis. Should no sales be recorded in two consecutive contract quarters, the Participating State/Entity may terminate this ACS.

The reporting periods coincide with the State of Florida's fiscal year which is July 1st through June 30th of each year. The quarters are divided as follows:

- 1st Quarter – July 1st through September 30th
- 2nd Quarter – October 1st through December 31st
- 3rd Quarter – January 1st through March 31st
- 4th Quarter – April 1st through June 30th

- I. Business Review Meetings: The Participating State/Entity reserves the right to schedule business review meetings as frequently as necessary. The Participating State/Entity will provide the format for the Contractor's agenda. Prior to the meeting, the Contractor shall submit the completed agenda to the Participating State/Entity for review and acceptance. The Contractor shall address the agenda items and any of the Participating State/Entity's additional concerns at the meeting. Failure to comply with this section may result in the Contractor being found in default and ACS termination.

- J. Commitment to Diversity in Government Contracting: The State of Florida is committed to supporting its diverse business industry and population through ensuring participation by minority-, women-, wartime-, and service-disabled veteran business enterprises in the economic life of the State. The State of Florida Mentor Protégé Program connects minority-, women-, wartime-, and service-disabled veteran business enterprises with private corporations for business development mentoring. We strongly encourage firms doing business with the State of Florida to consider this initiative. For more information on the Mentor Protégé Program, please contact the Office of Supplier Diversity at (850) 487-0915 or [osdhelp@dms.myflorida.com](mailto:osdhelp@dms.myflorida.com).

Upon request, the Contractor shall report to the Office of Supplier Diversity spend with certified and other minority business enterprises. These reports will include the period covered, the name, minority code and Federal Employer Identification Number of each minority vendor utilized during the period. Commodities and services provided by the minority business enterprise, and the amount paid to each minority vendor on behalf of each purchasing agency ordering under the terms of this ACS.

- K. Cooperation with the Inspector General: Pursuant to section 20.055(5), Florida Statutes, contractor and any subcontractors understand and will comply with their duty to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.
- L. Certification of Drug-Free Workplace: In executing this ACS, Contractor certifies that it has implemented a drug-free workforce program.
- M. Resellers/Partners: The Contractor may use resellers/partners in order to provide equipment and services. All resellers/partners shall be the direct responsibility of the Contractor. The Contractor is responsible for all liability, terms and conditions within Authorized Contract and this ACS. The Contractors resellers/partners' participation will be in accordance with the terms and conditions set forth in the aforementioned Authorized Contract and this ACS. If a reseller/partner is authorized to conduct business on behalf of the Contractor and the reseller/partner is to receive compensation from the Contractor for its services, then any dispute between the Contractor and the reseller/partner shall be resolved between the Contractor and the reseller/partner. The State of Florida is not a party to any agreement entered into between the Contractor and its resellers/partners. The Contractor shall be responsible to report all contract sales (and pay any associated MFMP transaction fees), including those of any such resellers/partners and shall ensure that all such resellers/partners meet the following requirements:
- Have an ACTIVE Registration with the Florida Department of State, Division of Corporations ([www.sunbiz.org](http://www.sunbiz.org))
  - Registered in the MFMP Vendor Information Portal (<https://vendor.myfloridamarketplace.com>)
  - Not be on the State of Florida's Convicted, Suspended, or Discriminatory lists [http://www.dms.myflorida.com/business\\_operations/State\\_purchasing/vendor\\_information/convicted\\_suspended\\_discriminatory\\_complaints\\_vendor\\_lists](http://www.dms.myflorida.com/business_operations/State_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists)
  - Have a copy of e-Verify Status on file
  - Have a current W-9 filed with the Florida Department of Financial Services (<https://flvendor.myfloridacfo.com>)

- N. 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 condition 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.

## **6. Contract Management**

6.1 The Department employee responsible for maintaining the contract file for this ACS is:

Jeremy Williams, Contract Manager  
FL Department of Management Services  
Division of State Purchasing  
4050 Esplanade Way, Ste. 360  
Tallahassee, FL 32399-0950  
Telephone: 850-414-6740  
E-mail: [jeremy.williams@dms.myflorida.com](mailto:jeremy.williams@dms.myflorida.com)

6.2 The Department may unilaterally appoint a different Contract Manager to the ACS. Said action shall not constitute or require an amendment to the ACS. Any communication to the Department relating to the ACS shall be addressed to the Contract Manager.

6.3 The Contractor shall assign one individual to serve as the designated contact person for this ACS. All questions and Customer service issues concerning this ACS shall be directed to the Contractor's designated contact person. It will be the designated contact person's responsibility to coordinate with necessary Customer personnel as required to answer questions and resolve issues. The Contractor must provide written notice to the Department if a new employee is designated as the contact person for this ACS within 5 business days of the change.

6.4 The Contractor employee responsible for maintaining the contract file for this ACS is:

Keone Trask  
President  
Toll Free Phone Number: 888-473-3261  
Direct Phone Number: 775-473-9199  
Fax Number: 775-473-9108  
Email: [info@getcleartouch.com](mailto:info@getcleartouch.com)

## **7. Subcontractors/Resellers**

The Contractor must request Department approval prior to using subcontractors to provide products or perform services under this ACS. Contractor's use of subcontractors without the express prior written consent of the Department shall constitute a breach of this ACS and may result in termination of the ACS.

## **8. Entire Agreement of the Parties**

8.1 This document and documents previously incorporated by reference constitute the ACS and entire understanding of the parties. Any modification to the ACS must be in writing and signed by the parties.

8.2 In the event of conflict, the documents shall have priority in the order listed below:

- 8.2.1 This document and amendments, with latest issued having priority
- 8.2.2 The Authorized Contract, including exhibits and amendments
- 8.2.3 General Contract Conditions
- 8.2.4 Agency Purchase Orders

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date signed by both parties below.

State of Florida	
Department of Management Services:	Clear Touch Interactive, Inc.:
By: _____	By: _____
Name: <u>Debra Forbess</u>	Name: _____
Title: <u>Director of Finance and Administration</u>	Title: _____
Date: _____	Date: _____



- 8.2.1 This document and amendments, with latest issued having priority
- 8.2.2 The Authorized Contract, including exhibits and amendments
- 8.2.3 General Contract Conditions
- 8.2.4 Agency Purchase Orders

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date signed by both parties below.

State of Florida

Department of Management Services:

Clear Touch Interactive, Inc.:

By: 

By: 

Name: Debra Forbess

Name: Keone Trask

Title: Director of Finance and Administration

Title: President

Date: 10/17/16

Date: 09/29/16

# ATTACHMENT I

## GENERAL CONTRACT CONDITIONS

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**These General Contract Conditions supersede and replace in their entirety all General Contract Conditions, Form PUR 1000, which is incorporated by reference in Rule 60A-1.002, Florida Administrative Code (F.A.C.)**

### **SECTION 1. DEFINITIONS.**

The following definition applies in addition to the definitions in Chapter 287, Florida Statutes, (F.S.) and Rule Chapter 60A-1, F.A.C.:

#### **1.1 Customer.**

The agency or eligible user that purchases commodities or contractual services pursuant to the Contract.

### **SECTION 2. CONTRACT TERM AND TERMINATION.**

#### **2.1 Initial Term.**

The initial term will begin on the date set forth in the Contract or on the date the Contract is signed by all Parties, whichever is later.

## **2.2 Renewal.**

Upon written agreement, the Department and the Contractor may renew the Contract in whole or in part only as set forth in the Contract, and in accordance with section 287.057(13), F.S., and Rule 60A-1.048, F.A.C.

## **2.3 Suspension of Work and Termination.**

### **2.3.1 Suspension of Work.**

The Department may, at its sole discretion, suspend any or all activities under the Contract, at any time, when it is in the best interest of the State of Florida to do so. A Customer may, at its sole discretion, suspend a resulting contract or purchase order, at any time, when in the best interest of the Customer to do so. The Department or Customer will 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 must comply with the notice and will cease the activities associated with any resulting contract or purchase order. Within 90 days, or any longer period agreed to by the Contractor, the Department or Customer will either (1) issue a notice authorizing resumption of work, at which time activity will resume, or (2) terminate the Contract or a resulting contract or purchase order. Suspension of work will not entitle the Contractor to any additional compensation.

### **2.3.2 Termination for Convenience.**

The Contract may be terminated by the Department in whole or in part at any time, in the best interest of the State of Florida. If the Contract is terminated before performance is completed, the Contractor will be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the Contract price as the amount of work satisfactorily performed. All work in progress will become the property of the Customer and will be turned over promptly by the Contractor.

### **2.3.3 Termination for Cause.**

If the Department determines that the performance of the Contractor is not satisfactory, the Department may, at its sole discretion, (a) immediately terminate the Contract, (b) notify the Contractor of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Contract will terminate at the end of such time, or (c) take other action deemed appropriate by the Department.

## **SECTION 3. PAYMENT AND FEES.**

### **3.1 Pricing.**

The Contractor will not exceed the pricing set forth in the Contract.

### **3.2 Price Decreases.**

The following price decrease terms will apply to the Contract:

(a) Quantity Discounts. Contractor may offer additional discounts for one-time delivery of large single orders.

(b) Preferred Pricing. Consistent with the goals of section 216.0113, F.S., Contractor acknowledges and recognizes that the Department wants to take advantage of any improvements in pricing over the course of the Contract period. To that end, the pricing indicated in this Contract is a maximum guarantee under the terms of this clause. Contractor's pricing will not exceed, on an aggregate basis, the pricing offered under comparable contracts for public entities. Comparable contracts are those which are similar in size, scope and terms. The Contractor shall submit to the Department a completed Preferred Pricing affidavit form annually.

(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 must submit documentation identifying the proposed (1) starting and ending dates of the promotion, (2) commodities or contractual services involved, and (3) promotional prices compared to then-authorized prices.

### **3.3 Payment Invoicing.**

The Contractor will be paid upon submission of properly certified invoices to the Customer after delivery and acceptance of commodities or contractual services is confirmed by the Customer. Invoices must contain detail sufficient for an audit and contain the Contract Number and the Contractor's Federal Employer Identification Number.

### **3.4 Purchase Order.**

A Customer may use purchase orders to buy commodities or contractual services pursuant to the Contract. The Contractor must provide commodities or contractual services pursuant to purchase orders. The purchase order period of performance survives the expiration of the Contract. The duration of purchase orders must not exceed the expiration of the Contract by more than 12 months.

### **3.5 Travel.**

Travel expenses are not reimbursable unless specifically authorized by the Customer in writing, and may be reimbursed only in accordance with section 112.061, F.S.

### **3.6 Annual Appropriation.**

Pursuant to section 287.0582, F.S., if the Contract binds the State of Florida or an agency for the purchase of services or tangible personal property for a period in excess of one fiscal year, the State of Florida's performance and obligation to pay under the Contract is contingent upon an annual appropriation by the Legislature.

### **3.7 Transaction Fees.**

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to section 287.057(22), Florida Statutes. All payments issued by Customers to registered Vendors for purchases of commodities or contractual services will be assessed Transaction Fees as prescribed by rule 60A-1.031, Florida Administrative Code, or as may otherwise be established by law. Vendors must pay the Transaction Fees and agree to automatic deduction of the Transaction Fees, when automatic deduction becomes available. Vendors will submit any monthly reports required pursuant to the rule. All such reports and payments will be subject to audit. Failure to comply with the payment of the Transaction

Fees or reporting of transactions will constitute grounds for declaring the Vendor in default and subject the Vendor to exclusion from business with the State of Florida.

**3.8 Taxes.**

The State of Florida is not required to pay any taxes, including customs and tariffs, on commodities or contractual services purchased under the Contract.

**3.9 Return of Funds.**

Contractor will return any overpayments due to unearned funds or funds disallowed pursuant to the terms of the Contract that were disbursed to the Contractor by the Department or Customer. The Contractor must return any overpayment within 40 calendar days after either discovery by the Contractor, its independent auditor, or notification by the Department or Customer of the overpayment.

**SECTION 4. CONTRACT MANAGEMENT.**

**4.1 Composition and Priority.**

The Contractor agrees to provide commodities or contractual services to the Customer within the manner and at the location specified in the Contract and any attachments to the Contract. Additionally, the terms of the Contract supersede the terms of any and all prior or contemporaneous agreements between the Parties.

**4.2 Notices.**

All notices required under the Contract must be delivered to the designated Contract Manager by certified mail, return receipt requested, by reputable air courier service, email, or by personal delivery, or as otherwise identified by the Department.

**4.3 Department's Contract Manager.**

The Department's Contract Manager, is primarily responsible for the Department's oversight of the Contract. In the event that the Department changes the Contract Manager, the Department will notify the Contractor. Such a change does not require an amendment to the Contract.

**4.4 Contractor's Contract Manager.**

The Contractor's Contract Manager is primarily responsible for the Contractor's oversight of the Contract performance. In the event that the Contractor changes its Contract Manager, the Contractor will notify the Department. Such a change does not require an amendment to the Contract.

**4.5 Diversity Reporting.**

The State of Florida supports its diverse business community by creating opportunities for woman-, veteran-, and minority-owned small business enterprises to participate in procurements and contracts. The Department encourages supplier diversity through certification of woman-, veteran-, and minority-owned small business enterprises, and provides advocacy, outreach, and networking through regional business events. For additional information, please contact the Office of Supplier Diversity (OSD) at [osdinfo@dms.myflorida.com](mailto:osdinfo@dms.myflorida.com).

Upon request, the Contractor will report to the Department its spend with business enterprises certified by the OSD. These reports must include the time period covered, the name and Federal Employer Identification Number of each business enterprise utilized during the period, commodities and contractual services provided by the business enterprise, and the amount paid to the business enterprise on behalf of each Customer purchasing under the Contract.

#### **4.6 RESPECT.**

Subject to the agency determination provided for in Section 413.036, F.S., the following statement applies:

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 commodities or contractual services it offers is available at <http://www.respectofflorida.org>.

#### **4.7 PRIDE.**

Subject to the agency determination provided for in Sections 946.515 and 287.042(1), F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES WHICH ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM THE CORPORATION IDENTIFIED UNDER CHAPTER 946, F.S., IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 946.515(2) AND (4), F.S.; 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 THIS AGENCY INsofar AS DEALINGS WITH SUCH CORPORATION ARE CONCERNED.

Additional information about PRIDE and the commodities or contractual services it offers is available at <http://www.pride-enterprises.org>.

### **SECTION 5. COMPLIANCE WITH LAWS.**

#### **5.1 Conduct of Business.**

The Contractor must comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. For example, the Contractor must comply with Section 274A of the Immigration and Nationality Act, the Americans with

Disabilities Act, Health Insurance Portability and Accountability Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status.

Pursuant to subsection 287.058(1), F.S., the provisions of subparagraphs 287.058(1)(a)-(c), F.S., are hereby incorporated by reference, to the extent applicable.

**5.2 Governing Law and Venue.**

The laws of the State of Florida govern the Contract. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to the Contract. Further, the Contractor hereby waives any and all privileges and rights relating to venue it may have under Chapter 47, F.S., and any and all such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those based on convenience. The Contractor hereby submits to venue in the county chosen by the Department.

**5.3 Department of State Registration.**

The Contractor and any subcontractors that assert corporate status must provide the Department with conclusive evidence, per section 607.0127, F.S., of a certificate of status, not subject to qualification, if a Florida business entity, or of a certificate of authorization if a foreign business entity and maintain such status or authorization through the life of the Contract and any resulting contract or purchase order.

**5.4 Convicted and Discriminatory Vendor Lists.**

In accordance with sections 287.133 and 287.134, F.S., an entity or affiliate who is on the Convicted Vendor List or the Discriminatory Vendor List may not perform work as a contractor, supplier, subcontractor, or consultant under the Contract. The Contractor must notify the Department if it or any of its suppliers, subcontractors or consultants have been placed on the Convicted Vendor List or the Discriminatory Vendor List during the term of the Contract.

**5.5 Contractor Certification.**

If the Contract exceeds \$1,000,000.00 in total, not including renewal years, Contractor certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List created pursuant to sections 215.473, F.S. and 215.4725 F.S, respectively. Pursuant to section 287.135(5), F.S., and 287.135(3), F.S., Contractor agrees the Department may immediately terminate the Contract for cause if the Contractor is found to have submitted a false certification or if Contractor is placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel during the term of the Contract.

**5.6 Cooperation with Inspector General.**

Pursuant to subsection 20.055(5), F.S., Contractor, and any subcontractor to the Contractor, understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Contractor must provide any

type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but will 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 will retain such records for five years after the expiration of the Contract, or the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>), whichever is longer. The Contractor agrees to reimburse the State of Florida for the reasonable costs of investigation incurred by the Inspector General or other authorized State of Florida official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State of Florida which results in the suspension or debarment of the Contractor. Such costs will include, but will not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees.

#### **5.7 Inspection.**

Section 215.422, F.S., provides that agencies have five working days to inspect and approve commodities or contractual services. Items may be tested for compliance with specifications. Items delivered not conforming to specifications may be rejected and returned at the Contractor's expense.

### **SECTION 6. MISCELLANEOUS.**

#### **6.1 Notice of Legal Actions.**

The Contractor must notify the Department of any legal actions filed against it for a violation of any laws, rules, codes, ordinances or licensing requirements within 30 days of the action being filed. The Contractor must notify the Department of any legal actions filed against it for a breach of a contract of similar size and scope to this Contract within 30 days of the action being filed. Failure to notify the Department of a legal action within 30 days of the action will be grounds for termination for cause of the Contract.

#### **6.2 Subcontractors.**

The Contractor will not subcontract any work under the Contract without prior written consent of the Department. The Contractor is fully responsible for satisfactory completion of all subcontracted work. The Department supports diversity in its procurements and contracts, and requests that Contractor offer subcontracting opportunities to certified woman-, veteran-, and minority-owned small businesses. The Contractor may contact the OSD at [osdhelp@dms.myflorida.com](mailto:osdhelp@dms.myflorida.com) for information on certified small business enterprises available for subcontracting opportunities.

#### **6.3 Assignment.**

The Contractor will not sell, assign or transfer any of its rights, duties or obligations under the Contract without the prior written consent of the Department. In the event of any assignment, the Contractor remains secondarily liable for performance of the Contract. The Department may assign the Contract to another state agency.

#### **6.4 Independent Contractor.**

The Contractor and its employees, agents, representatives, and subcontractors are not employees or agents of the Department and are not entitled to the benefits of State of



Florida employees. The Department will not be bound by any acts or conduct of the Contractor or its employees, agents, representatives, or subcontractors. The Contractor agrees to include this provision in all of its subcontracts under the Contract.

**6.5 Risk of Loss.**

Until acceptance, risk of loss or damage will remain with the Contractor. The Contractor will be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer will: 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 or the Department rejects a commodity, Contractor will remove the commodity from the premises within 10 days after notification of rejection, and the risk of loss will remain with the Contractor. Commodities not removed by the Contractor within 10 days will be deemed abandoned by the Contractor and the Customer or the Department will have the right to dispose of it as its own property. Contractor will reimburse the Customer or the Department for costs and expenses incurred in storing or effecting removal or disposition of rejected commodities.

**6.6 Safety Standards.** All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State of Florida inspector. Acceptability customarily requires, at a minimum, an 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 National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished must meet all applicable requirements of the Occupational Safety and Health Act and State of Florida and federal requirements relating to clean air and water.

**6.7 Ombudsman.**

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this office are found in section 215.422, F.S., which include disseminating information relative to prompt payment and assisting contractors in receiving their payments in a timely manner from a Customer. The Vendor Ombudsman may be contacted at (850) 413-5516.

**6.8 Time is of the Essence.**

Time is of the essence regarding each and every obligation of the Contractor. Each obligation is deemed material, and a breach of any such obligation (including a breach resulting from untimely performance) is a material breach.

**6.9 Waiver.**

The delay or failure by the Department or Customer to exercise or enforce any rights under the Contract will not constitute waiver of such rights.

**6.10 Modification and Severability.**

The Contract may only be modified by written agreement between the Department and the Contractor. Should a court determine any provision of the Contract is invalid, the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Contract did not contain the provision held invalid.

**SECTION 7. WORKERS' COMPENSATION AND GENERAL LIABILITY INSURANCE, AND INDEMNIFICATION**

**7.1 Workers' Compensation Insurance.**

To the extent required by law, the Contractor must be self-insured against, or must secure and maintain during the life of the contract, Worker's Compensation Insurance for all its employees connected with the work of this project, and in case any work is subcontracted, the Contractor must require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees engaged in work under the resulting contract are covered by the Contractor's insurance program. Self-insurance or insurance coverage must comply with the Florida Worker's Compensation law. In the event hazardous work is being performed by the Contractor under the resulting contract or purchase order and any class of employees performing the hazardous work is not protected under Worker's Compensation statutes, the Contractor must provide, and cause each subcontractor to provide adequate insurance satisfactory to the Department for the protection of employees not otherwise protected.

**7.2 General Liability Insurance**

The Contractor must secure and maintain Commercial General Liability Insurance including bodily injury, property damage, product-liability, personal & advertising injury and completed operations. This insurance must provide coverage for all claims that may arise from the services, and operations completed under the Contract and any resulting contract or purchase order, whether such services or operations are by the Contractor or anyone directly or indirectly employed by them. Such insurance must include a Hold Harmless Agreement in favor of the State of Florida and also include the State of Florida as an Additional Named Insured for the entire length of the Contract and any resulting contract or purchase order. The Contractor is responsible for determining the minimum limits of liability necessary to provide reasonable financial protections to the Contractor and the State of Florida under the Contract and any resulting contract or purchase order.

All insurance policies must be with insurers licensed or eligible to transact business in the State of Florida. The Contractor's current certificate of insurance must contain a provision that the insurance must not be canceled for any reason except after thirty (30) days written notice to the Department's Contract Manager.

The Contractors must submit insurance certificates evidencing such insurance coverage prior to execution of a contract with the Department.

The Contractor must require its insurance carrier to add the Department to the insurance policies as an additional insured, as provided below:

Florida Department of Management Services  
c/o Division of State Purchasing

4050 Esplanade Way, Suite 36060  
Tallahassee, Florida 32399-0950

### **7.3 Indemnification.**

The Contractor agrees to indemnify, defend, and hold the Department, Customer, the State of Florida, its officers, employees and agents harmless from all fines, claims, assessments, suits, judgments, or damages, including consequential, special, indirect, and punitive damages, including court costs and attorney's fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right or out of any acts, actions, breaches, neglect or omissions of the Contractor, its employees, agents, subcontractors, assignees or delegates related to the Contract, as well as for any determination arising out of or related to the Contract that the Contractor or Contractor's employees, agents, subcontractors, assignees or delegates are not independent contractors in relation to the Department. The Contract does not constitute a waiver of sovereign immunity or consent by the Department or the State of Florida or its subdivisions to suit by third parties.

Without limiting this indemnification, the Department or Customer may provide 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.

## **SECTION 8. PUBLIC RECORDS, TRADE SECRETS, DOCUMENT MANAGEMENT AND INTELLECTUAL PROPERTY.**

### **8.1 Public Records.**

The Department may unilaterally cancel this Contract for refusal by the Contractor to comply with this section by not allowing public access to all documents, papers, letters or other material made or received by the Contractor in conjunction with the Contract, unless the records are exempt from section 24(a) of Article I of the State Constitution and section 119.07(1), F.S.

Solely for the purposes of this section the contract manager is the agency custodian of public records, unless another is designated per (e), below.

If, under a resulting contract or purchase order, the Contractor is providing services and is acting on behalf of a public agency, as provided by section 119.0701, Florida Statutes. The Contractor shall:

- (a) Keep and maintain public records required by the public agency to perform the service;
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within reasonable time and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the

contract term and following the completion of the contract if the contractor does not transfer the records to the public agency;

(d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency; and

**(e) IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE TELEPHONE NUMBER, EMAIL ADDRESS AND MAILING ADDRESS PROVIDED IN THE RESULTING CONTRACT OR PURCHASE ORDER.**

## **8.2 Protection of Trade Secrets or Confidential Information.**

If the Contractor considers any portion of materials made or received in the course of performing the Contract ("contract-related materials") to be trade secret under section 812.081, F.S., or otherwise confidential under Florida or federal law, the Contractor must clearly designate that portion of the materials as "confidential" when submitted to the Department.

If the Department receives a public records request for contract-related materials designated by the Contractor as "confidential," the Department will provide only the portions of the contract-related materials not designated as "confidential." If the requester asserts a right to examine contract-related materials designated as "confidential," the Department will notify the Contractor. The Contractor will be responsible for responding to and resolving all claims for access to contract-related materials it has designated "confidential."

If the Department is served with a request for discovery of contract-related materials designated "confidential," the Department will promptly notify the Contractor about the request. The Contractor will be responsible for filing the appropriate motion or objection in response to the request for discovery. The Department will provide materials designated "confidential" only if the Contractor fails to take appropriate action, within timeframes established by statute and court rule, to protect the materials designated as "confidential" from disclosure.

The Contractor will protect, defend, and indemnify the Department for claims, costs, fines, and attorney's fees arising from or relating to its designation of contract-related materials as "confidential."

### **8.3 Document Management.**

The Contractor must retain sufficient documentation to substantiate claims for payment under the Contract and all other records, electronic files, papers and documents that were made in relation to this Contract. Contractor must retain all documents related to the Contract for five years after expiration of the Contract, or, if longer, the period required by the General Records Schedules maintained by the Florida Department of State available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>.

### **8.4 Intellectual Property.**

Unless specifically addressed in the Contract, intellectual property rights to all property created or otherwise developed by the Contractor for the Department will be owned by the State of Florida through the Department at the completion of the Contract.

Any inventions or discoveries developed in the course of or as a result of services performed under the Contract which are patentable pursuant to 35 U.S.C. §101 are the sole property of the state of Florida. Contractor must inform the Department of any inventions or discoveries developed or made in connection with the Contract and will be referred to the Florida Department of State for a determination on whether patent protection will be sought for the invention or discovery. The State of Florida will be the sole owner of any and all patents resulting from any invention or discovery made in connection with this contract.

Contractor must notify the Department of State of any publications, artwork, or other copyrightable works developed in connection with the Contract. All copyrights created or developed in connection with the Contract are the sole property of the State of Florida.

## **SECTION 9. DATA SECURITY AND SERVICES.**

### **9.1 Duty to Provide Secure Data.**

The Contractor will maintain the security of State of Florida Data including, but not limited to, a secure area around any display of such Data or Data that is otherwise visible. The Contractor will also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information.

### **9.2 Warranty of Security.**

Unless otherwise agreed in writing, the Contractor and its subcontractors will not perform any of the services from outside of the United States, and the Contractor will not allow any State of Florida Data to be sent by any medium, transmitted or accessed outside of the United States.

Notwithstanding any provision of this Contract to the contrary, the Contractor must notify the Department as soon as possible, in accordance with the requirements of section 501.171, F.S., and in all events within one (1) business day in the event Contractor discovers any Data is breached, any unauthorized access of Data occurs (even by persons or companies with authorized access for other purposes), any unauthorized transmission of Data or any credible allegation or suspicion of a material violation of the above. This notification is required whether the event affects one agency/customer or the

entire population. The notification must be clear and conspicuous and include a description of the following:

- (a) The incident in general terms.
- (b) The type of information that was subject to the unauthorized access and acquisition.
- (c) The type and number of entities who were, or potentially have been affected by the breach.
- (d) The actions taken by the Contractor to protect the Data from further unauthorized access. However, the description of those actions in the written notice may be general so as not to further increase the risk or severity of the breach.

### **9.3 Remedial Measures.**

Upon becoming aware of an alleged security breach, Contractor's Contract Manager must set up a conference call with the Department's Contract Manager. The conference call invitation must contain a brief description of the nature of the event. When possible, a 30 minute notice will be given to allow Department personnel to be available for the call. If the designated time is not practical for the Department, an alternate time for the call will be scheduled. All available information must be shared on the call. The Contractor must answer all questions based on the information known at that time and answer additional questions as additional information becomes known. The Contractor must provide the Department with final documentation of the incident including all actions that took place. If the Contractor becomes aware of a security breach or security incident outside of normal business hours, the Contractor must notify the Department's Contract Manager and in all events, within one business day.

### **9.4 Indemnification (Breach of Warranty of Security).**

The Contractor agrees to defend, indemnify and hold harmless the Department, Customer, the State of Florida, its officers, directors and employees for any claims, suits or proceedings related to a breach of the Warranty of Security. The Contractor will include credit monitoring services at its own cost for those individuals affected or potentially affected by a breach of this warranty for a two year period of time following the breach.

### **9.5 Annual Certification.**

The Contractor is required to submit an annual certification demonstrating compliance with the Warranty of Security to the Department by December 31 of each Contract year.

## **SECTION 10. GRATUITIES AND LOBBYING.**

### **10.1 Gratuities.**

The Contractor will not, in connection with this Contract, directly or indirectly (1) offer, give, or agree to give anything of value to anyone as consideration for any State of Florida 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 anything of value for the benefit of, or at the direction or request of, any State of Florida officer or employee.

### **10.2 Lobbying.**

In accordance with sections 11.062 and 216.347, F.S., Contract funds are not for the purpose of lobbying the Legislature, the judicial branch, or the Department. Pursuant to

subsection 287.058(6), F.S., the Contract does not prohibit the Contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the Contract, after the Contract execution and during the Contract's term.

## **SECTION 11. CONTRACT MONITORING.**

### **11.1 Performance Standards.**

The Contractor agrees to perform all tasks and provide deliverables as set forth in the Statement of Work and attachments to the Contract. The Department and the Customer will be entitled at all times, upon request, to be advised as to the status of work being done by the Contractor and of the details thereof. Coordination must be maintained by the Contractor with representatives of the Customer, the Department, or of other agencies involved in the Contract on behalf of the Department.

### **11.2 Performance Deficiency.**

The Department or Customer may, in its sole discretion, notify the Contractor of the deficiency to be corrected, which correction must be made within a time-frame specified by the Department or Customer. The Contractor must provide the Department or Customer with a corrective action plan describing how the Contractor will address all issues of contract non-performance, unacceptable performance, and failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance.

### **11.3 Financial Consequences of Non-Performance.**

If the corrective action plan is unacceptable to the Department or Customer, or fails to remedy the performance deficiencies, the Contractor will be assessed a non-performance retainage equivalent to 10% of the total invoice amount or as specified in the Contract. The retainage will be applied to the invoice for the then-current billing period. The retainage will be withheld until the Contractor resolves the deficiency. If the deficiency is subsequently resolved, the Contractor may invoice the Customer for the retained amount during the next billing period. If the Contractor is unable to resolve the deficiency, the funds retained will be forfeited.

### **11.4 Liquidated Damages.**

The Contractor will promptly notify the Department or Customer upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion (or delivery) of any commodity or contractual service. The Contractor will use commercially reasonable efforts to avoid or minimize any delays in performance and will inform the Department or Customer of the steps the Contractor is taking or will take to do so, and the projected actual completion (or delivery) time. If the Contractor believes a delay in performance by the Department or Customer has caused or will cause the Contractor to be unable to perform its obligations on time, the Contractor will promptly so notify the Department or Customer and use commercially reasonable efforts to perform its obligations on time notwithstanding the Department or Customer's delay.

The Contractor acknowledges that untimely performance or other material noncompliance will damage the Department or Customer, but by their nature such damages may be difficult to ascertain. Accordingly, any liquidated damages provisions stated in the

solicitation will apply to this Contract. Liquidated damages are not intended to be a penalty and are solely intended to compensate for damages.

#### **11.5 Force Majeure, Notice of Delay, and No Damages for Delay.**

The Contractor will 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 will notify the Department or Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within 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 days after the date the Contractor first had reason to believe that a delay could result. The foregoing will 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 will be asserted by the Contractor. The Contractor will not be entitled to an increase in the Contract price or payment of any kind from the Department or 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 will perform at no increased cost, unless the Department or Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State of Florida or to Customers, in which case the Department or Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to commodities or contractual services 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 commodity or contractual services 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.

### **SECTION 12. CONTRACT AUDITS.**

#### **12.1 Performance or Compliance Audits.**

The Department may conduct, or cause to have conducted, either or both performance and compliance audits of the Contractor and subcontractors as determined by the Department. The Department may conduct an audit and review all the Contractor's and subcontractor's data and records that directly relate to the Contract. To the extent necessary to verify the Contractor's claims for payment under the Contract, the Contractor's agreements or contracts with subcontractors, partners or agents of the Contractor, pertaining to this Contract, may be inspected by the Department upon 15 days' notice, during normal working hours and in accordance with the Contractor's facility access procedures where facility access is required. Release statements from its subcontractors, partners or agents are not required for the Department or its designee to conduct compliance and performance audits on any of the Contractor's contracts relating



to this Contract. The State of Florida's Chief Financial Officer and the Office of the Auditor General also have authority to perform audits and inspections.

#### **12.2 Payment Audit.**

Records of costs incurred under terms of the Contract will be maintained. Records of costs incurred will include the Contractor's general accounting records, together with supporting documents and records of the Contractor and all subcontractors performing work, and all other records of the Contractor and subcontractors considered necessary by the Department, State of Florida's Chief Financial Officer or the Office of the Auditor General for audit.

### **SECTION 13. BACKGROUND SCREENING AND SECURITY.**

#### **13.1 Background Check.**

The Department may require the Contractor and its employees, agents, representatives and subcontractors to provide fingerprints and be subject to such background checks as directed by the Department. The cost of the background checks will be borne by the Contractor. The Department may require the Contractor to exclude the Contractor's employees, agents, representatives or subcontractors based on the background check results. In addition, the Contractor must ensure that all persons have a responsibility to self-report to the Contractor within three calendar days any arrest for any Disqualifying Offense. The Contractor must notify the Contract Manager within 24 hours of all details concerning any reported arrest. The Contractor will ensure that all background screening will be refreshed upon the request of the Department for each person during the term of the Contract.

#### **13.2 E-Verify.**

In accordance with Executive Order 11-116, the Contractor agrees to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of the Contract for the services specified in the Contract. The Contractor must also include a requirement in subcontracts that the subcontractor must utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term. In order to implement this provision, the Contractor must provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five days of Contract execution. If the Contractor is not enrolled in DHS E-Verify System, it will do so within five days of notice of Contract award, and provide the Contract Manager a copy of its MOU within five days of Contract execution. The link to E-Verify is provided below. <http://www.uscis.gov/e-verify>. Upon each Contractor or subcontractor new hire, the Contractor must provide a statement within five days to the Contract Manager identifying the new hire with its E-Verify case number.

#### **13.3 Disqualifying Offenses.**

If at any time it is determined that a person has a criminal misdemeanor or felony record regardless of adjudication (e.g., adjudication withheld, a plea of guilty or nolo contendere, or a guilty verdict) within the last six years from the date of the court's determination for the crimes listed below, or their equivalent in any jurisdiction, the Contractor is required to immediately remove that person from any position with access to State of Florida Data or directly performing services under the Contract. The disqualifying offenses are as follows:

- (a) Computer related or information technology crimes
- (b) Fraudulent practices, false pretenses and frauds, and credit card crimes
- (c) Forgery and counterfeiting
- (d) Violations involving checks and drafts
- (e) Misuse of medical or personnel records
- (f) Felony theft

**13.4 Communications and Confidentiality.**

The Contractor agrees that it will make no statements, press releases, or publicity releases concerning the Contract or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with the Contract, or any particulars thereof, during the period of the Contract, without first notifying the Department's Contract Manager or the Department designated contact person and securing prior written consent. The Contractor must maintain confidentiality of all confidential data, files, and records related to the services and commodities provided pursuant to the Contract and must comply with all state and federal laws, including, but not limited to sections 381.004, 384.29, 392.65, and 456.057, F.S. The Contractor's confidentiality procedures must be consistent with the most recent version of the Department security policies, protocols, and procedures. The Contractor must also comply with any applicable professional standards with respect to confidentiality of information.