

# OpenGov End User License Agreement

This End User License Agreement including the attached Exhibit A (this "Agreement") is made between OpenGov, Inc., a Delaware corporation ("OpenGov"), and the customer listed on the signature block below ("Customer"). Customer is purchasing OpenGov services through an authorized reseller ("Reseller"). This Agreement, which takes effect on the date of the last signature below ("Effective Date"), sets forth the terms under which Customer may use OpenGov's hosted software services.

## 1. Definitions

- 1.1. "Customer Data" means data that is provided by Customer to OpenGov pursuant to this Agreement (for example, by email or through Customer's software systems of record). Customer Data does not include any confidential personally identifiable information.
- 1.2. "Documentation" means materials produced by OpenGov that provide information about OpenGov's software products and systems. Customers may access the most up-to-date Documentation on the Customer Resource Center page at [opengov.zendesk.com](https://opengov.zendesk.com).
- 1.3. "Intellectual Property Rights" means all intellectual property rights including all past, present, and future rights associated with works of authorship, including exclusive exploitation rights, copyrights, and moral rights, trademark and trade name rights and similar rights, trade secret rights, patent rights, and any other proprietary rights in intellectual property of every kind and nature.
- 1.4. "Order Form" means the document used between the Reseller and the Customer to purchase specified OpenGov services.
- 1.5. "Party" (or "Parties") refers to OpenGov and/or Customer. For the avoidance of doubt, Reseller is not a Party to this Agreement.
- 1.6. "Subscription Term" means the period from the start date of the Software Services specified on the first Order Form to the last end date of the Software Services specified on any Order Form.

## 2. Software Services, Support, and Professional Services

- 2.1. Software Services. Subject to the terms and conditions of this Agreement, OpenGov will use commercially reasonable efforts to provide the commercial off-the-shelf software solutions identified in the applicable Order Form ("Software Services").
- 2.2. Support and Service Levels. Customer support is available by email to [support@opengov.com](mailto:support@opengov.com) or by using the chat messaging functionality of the Software Services, both of which are available during OpenGov's standard business hours. Customer may report issues any time. However, OpenGov will address issues during business hours. OpenGov will provide support for the Software Services in accordance

with the Support and Software Service Levels found at [opengov.com/service-sla](https://opengov.com/service-sla), as long as Customer is entitled to receive support under the applicable Order Form and this Agreement.

- 2.3. Professional Services. If OpenGov or its authorized independent contractors provides professional services to Customer through Reseller, such as implementation services, then OpenGov will specify the professional services ("Professional Services") in an applicable statement of work ("SOW"). Unless otherwise specified in a SOW, any pre-paid professional services must be utilized within one year from the Effective Date.

### **3. Restrictions and Responsibilities**

- 3.1. Restrictions. Customer may not use the Software Services in any manner or for any purpose other than as expressly permitted by the Agreement and Documentation. In addition, Customer shall not, and shall not permit or enable any third party to: (a) use or access any of the Software Services to build a competitive product or service; (b) modify, disassemble, decompile, reverse engineer or otherwise make any derivative use of the Software Services (except to the extent applicable laws specifically prohibit such restriction); (c) sell, license, rent, lease, assign, distribute, display, host, disclose, outsource, copy or otherwise commercially exploit the Software Services; (d) perform or disclose any benchmarking or performance testing of the Software Services; (e) remove any proprietary notices included with the Software Services; (f) use the Software Services in violation of applicable law; or (g) transfer any confidential personally identifiable information to OpenGov or the Software Services platform.
- 3.2. Responsibilities. Customer shall be responsible for obtaining and maintaining computers and third party software systems of record (such as Customer's ERP systems) needed to connect to, access or otherwise use the Software Services. Customer also shall be responsible for: (a) ensuring that such equipment is compatible with the Software Services, (b) maintaining the security of such equipment, user accounts, passwords and files, and (c) all uses of Customer user accounts by any party other than OpenGov.

### **4. Intellectual Property Rights; License Grants; Access to Customer Data**

- 4.1. Software Services. OpenGov owns all interests and Intellectual Property Rights in the Software Services. The look and feel of the Software Services, including any custom fonts, graphics and button icons, are the property of OpenGov. Customer may not copy, imitate, or use them, in whole or in part, without OpenGov's prior written consent. Subject to Customer's obligations under this Agreement, OpenGov grants Customer a non-exclusive, royalty-free license during the Subscription Term to use the Software Services.
- 4.2. Customer Data. Customer Data and the Intellectual Property Rights therein belong to the Customer. Customer grants OpenGov and its partners (such as hosting providers) a non-exclusive, royalty-free license to use, store, edit, and reformat the Customer Data for the purpose of providing the Software Services. Customer further agrees that

OpenGov and its partners may use aggregated, anonymized Customer Data for purposes of sales, marketing, business development, product enhancement, customer service, and data analysis. Insights gleaned from aggregated, anonymized Customer Data will belong to OpenGov.

- 4.3. Access to Customer Data. Customer may download the Customer Data from the Software Services at any time during the Subscription Term, excluding during routine software maintenance periods. OpenGov has no obligation to return Customer Data to Customer.
- 4.4. Deletion of Customer Data. Unless otherwise requested pursuant to this Section 4.4, upon the termination of this Agreement, the Customer Data shall be deleted pursuant to OpenGov's standard data deletion and retention practices. Upon written request, Customer may request deletion of Customer Data prior to the date of termination of this Agreement. Such a request must be addressed to "OpenGov Vice President, Customer Success" at OpenGov's address for notice in Section 10.2.
- 4.5. Feedback. "Feedback" means suggestions, comments, improvements, ideas, or other feedback or materials regarding the Software Services provided by Customer to OpenGov, including feedback provided through online developer community forums. Customer grants OpenGov a non-exclusive, royalty-free, irrevocable, perpetual, worldwide license to use and incorporate into the Software Services and Documentation Customer's Feedback. OpenGov will exclusively own any improvements or modifications to the Software Services and Documentation based on or derived from any of Customer's Feedback including all Intellectual Property Rights in and to the improvements and modifications.

## **5. Confidentiality**

- 5.1. "Confidential Information" means all confidential business, technical, and financial information of the disclosing Party that is marked as "Confidential" or an equivalent designation or that should reasonably be understood to be confidential given the nature of the information and/or the circumstances surrounding the disclosure. OpenGov's Confidential Information includes, without limitation, the software underlying the Software Services, and all Documentation.
- 5.2. Confidential Information does not include: (a) data that the Customer has previously released to the public; (b) data that Customer would be required to release to the public upon request under applicable federal, state, or local public records laws; (c) Customer Data that Customer requests OpenGov make available to the public in conjunction with the Software Services; (d) information that becomes publicly known through no breach by either Party; (e) information that was rightfully received by a Party from a third Party without restriction on use or disclosure; or (f) information independently developed by the receiving Party without access to the disclosing Party's Confidential Information.
- 5.3. Each Party agrees to obtain prior written consent before disclosing any of the other Party's Confidential Information. Each Party further agrees to use the other's

Confidential Information only in connection with this Agreement. Each Party further agrees to protect the other Party's Confidential Information using the measures that it employs with respect to its own Confidential Information of a similar nature, but in no event with less than reasonable care. If a Party is required to disclose Confidential Information by law or court order, they must notify the other Party in writing before making the disclosure to give the other Party an opportunity to oppose or limit the disclosure.

## **6. Term and Termination**

- 6.1. Subscription Term. This Agreement commences when the Parties execute this Agreement and continues until the last end date of the Software Services specified on the Order Form, unless sooner terminated pursuant to Section 6.3.
- 6.2. Renewal. This Agreement will renew if Customer enters another Order Form for the Software Services and/or additional Professional Services before the end of the Subscription Term.
- 6.3. Termination. If either Party materially breaches any term of this Agreement and fails to cure such breach within 30 days after receiving written notice by the non-breaching Party the non-breaching Party may terminate this Agreement. Neither Party shall have the right to terminate this Agreement early without a legally valid cause.
- 6.4. Effect of Termination. Upon termination of this Agreement pursuant to Section 6.1, 6.2, or 6.3: (a) Customer shall pay in full for all Software Services and Professional Services performed up to the date of termination or expiration, (b) OpenGov shall stop providing Software Services and Professional Services to Customer; and (c) each Party shall (at the other Party's option) return or delete any of the other Party's Confidential Information in its possession.

## **7. Payment of Fees**

- 7.1. Fees for Software Services are due at the beginning of each year of the Subscription Term, and Customer must timely pay all applicable fees to Reseller to avoid interruption of the Software Services. Fees for Professional Services are due in advance, unless indicated otherwise in the Order Form.

## **8. Representations and Warranties; Disclaimer**

- 8.1. By OpenGov.
  - 8.1.1. General Warranty. OpenGov represents and warrants that it has all right and authority necessary to enter into and perform this Agreement.
  - 8.1.2. Professional Services Warranty. OpenGov further represents and warrants that the Professional Services, if any, will be performed in a professional and workmanlike manner in accordance with the related SOW and generally prevailing industry standards. For any breach of the Professional Services warranty, Customer's exclusive remedy and OpenGov's entire liability will be the re-performance of the applicable services. If OpenGov is unable to re-perform such work as warranted,

Customer will be entitled to recover all fees paid to OpenGov for the deficient work. Customer must give written notice of any claim under this warranty to OpenGov within 90 days of performance of such work to receive such warranty remedies.

- 8.1.3. Software Services Warranty. OpenGov further represents and warrants that for a period of 90 days after the subscription start date specified in the Order Form, the Software Services will perform in all material respects in accordance with the Documentation. The foregoing warranty does not apply to any Software Services that have been used in a manner other than as set forth in the Documentation and authorized under this Agreement. OpenGov does not warrant that the Software Services will be uninterrupted or error-free. Customer must give written notice of any claim under this warranty to OpenGov during the Subscription Term. OpenGov's entire liability for any breach of the foregoing warranty is to repair or replace any nonconforming Software Services so that the affected portion of the Software Services operates as warranted or, if OpenGov is unable to do so, terminate the license for such Software Services and refund the pre-paid, unused portion of the fee for such Software Services to the Reseller.

- 8.2. By Customer. Customer represents and warrants that (a) it has all right and authority necessary to enter into and perform this Agreement; and (b) OpenGov's use of the Customer Data pursuant to this Agreement will not infringe, violate or misappropriate the Intellectual Property Rights of any third party.

- 8.3. Disclaimer. OPENGOV DOES NOT WARRANT THAT THE SOFTWARE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE SERVICES. EXCEPT AS SET FORTH IN THIS SECTION 8, THE SOFTWARE SERVICES ARE PROVIDED "AS IS" AND OPENGOV DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

## **9. Limitation of Liability**

- 9.1. By Type. NEITHER OPENGOV NOR CUSTOMER, NOR THEIR SUPPLIERS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS OR EMPLOYEES, SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES; OR (C) FOR ANY MATTER BEYOND A PARTY'S REASONABLE CONTROL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
- 9.2. By Amount. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE, CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE FEES PAID FOR THE SOFTWARE SERVICES UNDER THE

APPLICABLE ORDER FORM IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

- 9.3. Limitation of Liability Exclusions. The limitations of liability set forth in Sections 9.1 and 9.2 above do not apply to, and each Party accepts liability to the other for: (a) claims based on either Party's intentional breach of its obligations set forth in Section 5 (Confidentiality), (b) claims arising out of fraud or willful misconduct by either Party and (c) either Party's infringement of the other Party's Intellectual Property Rights.
- 9.4. No Limitation of Liability by Law. Because some jurisdictions do not allow liability or damages to be limited to the extent set forth above, some of the above limitations may not apply to Customer.

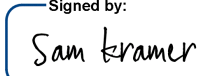
## **10. Miscellaneous**

- 10.1. Logo Use. OpenGov shall have the right to use and display Customer's logos and trade names for marketing and promotional purposes for OpenGov's website and marketing materials, subject to Customer's trademark usage guidelines provided to OpenGov.
- 10.2. Notice. Ordinary day-to-day operational communications may be conducted by email, live chat or telephone. However, for notices, including legal notices, required by the Agreement (in sections where the word "notice" appears) the Parties must communicate more formally in a writing sent via USPS certified mail and via email. OpenGov's addresses for notice are: OpenGov, Inc., 6525 Crown Blvd #41340, San Jose, CA 95160, and legal@opengov.com.
- 10.3. Anti-corruption. Neither OpenGov nor any of its employees or agents has offered or provided any illegal or improper payment, gift, or transfer of value in connection with this Agreement. The Parties will promptly notify each other if they become aware of any violation of any applicable anti-corruption laws in connection with this Agreement.
- 10.4. Injunctive Relief. The Parties acknowledge that any breach of the confidentiality provisions or the unauthorized use of a Party's intellectual property may result in serious and irreparable injury to the aggrieved Party for which damages may not adequately compensate the aggrieved Party. The Parties agree, therefore, that, in addition to any other remedy that the aggrieved Party may have, it shall be entitled to seek equitable injunctive relief without being required to post a bond or other surety or to prove either actual damages or that damages would be an inadequate remedy.
- 10.5. Force Majeure. Neither Party shall be held responsible or liable for any losses arising out of any delay or failure in performance of any part of this Agreement due to any act of god, act of governmental authority, or due to war, riot, labor difficulty, failure of performance by any third-party service, utilities, or equipment provider, or any other cause beyond the reasonable control of the Party delayed or prevented from performing.
- 10.6. Severability; Waiver. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. Any

express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement.

- 10.7. Survival. The following sections of this Agreement shall survive termination: Section 5. (Confidentiality), Section 7 (Payment of Fees), Section 4.4 (Deletion of Customer Data), Section 8.3 (Warranty Disclaimer), Section 9 (Limitation of Liability) and Section 10 (Miscellaneous).
- 10.8. Assignment. There are no third-party beneficiaries to this Agreement. Except as set forth in this Section 10.8, neither party may assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations to a third party without the other party's written consent, which consent may not be unreasonably withheld, conditioned, or delayed. Either party may assign, without such consent but upon written notice, its rights and obligations under this Agreement to its corporate affiliate or to any entity that acquires all or substantially all of its capital stock or its assets related to this Agreement, through purchase, merger, consolidation, or otherwise. Any other attempted assignment shall be void. This Agreement will benefit and bind permitted assigns and successors.
- 10.9. Independent Contractors. This Agreement does not create an agency, partnership, joint venture, or employment relationship, and neither party has any authority to bind the other.
- 10.10. Governing Law and Jurisdiction. This Agreement will be governed by the laws of the Customer's jurisdiction, without regard to conflict of laws principles. The parties submit to personal jurisdiction and venue in the courts of the Customer's jurisdiction.
- 10.11. Complete Agreement. OpenGov has made no other promises or representations to Customer other than those contained in this Agreement. Any modification to this Agreement must be in writing and signed by an authorized representative of each party.

*Signature page to follow.*

Signatures	
<b>Customer: City of Port St. Lucie</b>  Signature: _____ Name: _____ Title: _____ Date: _____	<b>OpenGov, Inc.</b>  <div>Signed by:  _____</div> <div>Signature: _____ 042E57B5396E4E8...</div> <div>Name: _____ Sam Kramer</div> <div>Title: _____ SVP, Finance</div> <div>Date: _____ 2/11/2025</div>



## **EXHIBIT A – LOCAL GOVERNMENT TERMS**

This Exhibit A – Local Government Terms, supplements the OpenGov End User License Agreement, the Cloud Solutions NASPO Alternative Contract Source No. 43230000-NASPO-16\_ACS, the State of Florida Participating Agreement, and any subsequent renewals (collectively, “Contract”). OpenGov, Inc. (“Contractor”) and the City of Port St. Lucie (“City”) agree that the terms and conditions in this Exhibit A are included in the Agreement as if fully stated therein. If any term or condition in the Contract conflicts with any term or condition in this Exhibit A, the parties agree that this Exhibit A shall control.

### **SECTION I** **INDEMNIFICATION/HOLD HARMLESS**

Contractor agrees to indemnify, defend, and hold harmless, the City, its officers, agents, and employees from, and against any and all claims, actions, liabilities, losses and expenses including, but not limited to, attorney’s fees for personal, economic, or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or may be alleged to have risen from the grossly negligent acts, errors, omissions or other willful and wrongful conduct of Contractor, agents, laborers, subcontractors or other personnel entity acting under Contractor control in connection with the Contractor’s performance of services under this Contract. To that extent, Contractor shall pay any and all such claims and losses and shall pay any and all such costs and judgments which may issue from any lawsuit arising from such claims and losses including wrongful termination or allegations of discrimination or harassment, and shall pay all costs and attorney’s fees expended by the City in defense of such claims and losses, including appeals. That the aforesaid hold-harmless Contract by Contractor shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations of Contractor or any agent laborers, subcontractors, or employee of Contractor regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages. Contractor shall be held responsible for any violation of laws, rules, regulations, or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by Contractor on the work. This indemnification shall survive the termination of this Contract.

### **SECTION II** **INSURANCE**

The Contractor shall on a primary basis and at its sole expense agree to maintain in full force and effect at all times during the life of this Contract, insurance coverage and limits, including endorsements, as described herein. The requirements contained herein, as well as City’s review or acceptance of insurance maintained by Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under the Contract.

The parties agree and recognize that it is not the intent of the City of Port St. Lucie that any insurance policy/coverage that it may obtain pursuant to any provision of this Contract will provide insurance coverage to any entity, corporation, business, person, or organization, other than the City of Port St. Lucie and the City shall not be obligated to provide any insurance coverage other than for the City of Port St. Lucie or extend its immunity pursuant to Section 768.28, Florida Statutes, and as may be amended from time to time, under its self-insured program. Any provision contained herein to the contrary shall be considered void and unenforceable by any party. This provision does not apply to

any obligation imposed on any other party to obtain insurance coverage for this project and/or any obligation to name the City of Port St. Lucie as an additional insured under any other insurance policy or otherwise protect the interests of the City of Port St. Lucie as specified in this Contract.

Workers' Compensation Insurance & Employer's Liability: The Contractor shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes, and as may be amended from time to time. Employers' Liability and must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, and \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement must be provided. Coverage shall apply on a primary basis.

Commercial General Liability Insurance: The Contractor shall agree to maintain Commercial General Liability insurance, issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000
Medical expense	\$10,000 any 1 person

Additional Insured: An Additional Insured endorsement **must** be attached to the certificate of insurance (should be CG2026) under the General Liability policy. Coverage is to be written on an occurrence form basis and shall apply as primary and non-contributory. Defense costs are to be in addition to the limit of liability. A waiver of subrogation is to be provided in favor of the City. Coverage shall extend to independent contractors and fellow employees. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

Except as to Workers' Compensation and Employers' Liability, and Professional Liability Insurance, Certificates of Insurance and policies shall clearly state that coverage required by the Contract has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents, and employees as Additional Insured for Commercial General Liability and Business Auto policies. The name for the Additional Insured endorsement issued by the insurer shall read: **"City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents shall be listed as additional insured and shall include Contract [#20250078 Assessment Management]."** Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance. The policies shall be specifically endorsed to provide thirty (30) days written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. In the event that the statutory liability of the City is amended during the term of the Contract to exceed the above limits, OpenGov shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City. If the City requests that OpenGov increase its coverage to the amended statutory limit of liability

of the City, then OpenGov, with thirty (30) days notice, may contact the City to renegotiate an increased Contract price. However, any such renegotiation of the Contract price must be directly and necessarily related to a price of insurance premium increase based on the increased statutory limit of liability. If the City and OpenGov are unable to renegotiate such terms, then OpenGov may terminate the Contract. However, such termination is only permissible if the City requests OpenGov to increase its coverage limits in compliance with this paragraph, and the parties discuss in good faith, but cannot agree, to a renegotiation of the Contract price.

Business Automobile Liability Insurance: The Contractor shall agree to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event the Contractor does not own any automobiles, the Business Auto Liability requirement shall be amended allowing Contractor to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation must be provided. Coverage shall apply on a primary and non-contributory basis.

Cyber Liability Insurance: Contractor shall agree to maintain Cyber Liability in limits not less \$1,000,000 Per claim for direct loss, legal liability, and consequential loss resulting from cyber security breaches. Coverage to include coverage for Privacy & Security Liability, Security Breach Response / Customer Breach Notice Expense, Cyber Extortion and Electronic Media Liability. The City of Port St. Lucie must be listed as an additional insured. A waiver of subrogation shall be provided in favor of the Customer. Coverage shall apply on a primary and non-contributory basis.

Technology Errors & Omissions (E&O) Liability Insurance: Contractor shall agree to maintain Technology Errors & Omissions Liability at a limit of liability not less than \$1,000,000 per claim. For policies written on a "Claims-Made" basis, the Contractor warrants the retroactive date equals or precedes the effective date of this Contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advance, if available, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this Contract, Contractor shall agree to purchase a SERP with a reporting period not less than four (4) years.

Waiver of Subrogation: By entering into this Contract, Contractor agrees to a Waiver of Subrogation for each required policy. When required by the insurer or should a policy condition not permit an Insured to enter into a pre-loss Contract to waive subrogation without an endorsement, then Contractor shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent.

Deductibles: All deductible amounts shall be paid for and be the responsibility of the Contractor for any and all claims under this Contract.

It shall be the responsibility of the Contractor to ensure that all independent contractors and subcontractors comply with the same insurance requirements referenced herein. It will be the responsibility of the Contractor to obtain Certificates of Insurance from all independent contractors

and subcontractors listing the City as an Additional Insured without the language “when required by written contract.”

The Contractor may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employers’ Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest “Each Occurrence” limit for either Commercial General Liability, Business Auto Liability, or Employers’ Liability. When required by the insurer, or when Umbrella or Excess Liability is written on Non-Follow Form, the City shall be endorsed as an “Additional Insured.”

The Employer, by and through its Risk Management Department, or its designee, shall be entitled to request an annual review of Contractor’s insurance policies to ensure compliance with the Contract. All insurance carriers must have an AM Best rating of at least A:VII or better.

A failure on the part of the Contractor to execute the Contract and/or punctually deliver the required insurance certificates and other documentation may be cause for annulment of the award.

### **SECTION III** **COMPLIANCE WITH LAWS**

The Contractor shall give all notices required by and shall otherwise comply with all applicable laws, ordinances, and codes and shall, at his own expense, secure and pay the fees and charges for all permits required for the performance of the Contract. All materials furnished and works done are to comply with all federal, state, and local laws and regulations.

### **SECTION IV** **SOVEREIGN IMMUNITY**

Nothing contained in this Contract shall be deemed or otherwise interpreted as waiving the City’s sovereign immunity protections existing under the laws of the State of Florida, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

### **SECTION V** **PUBLIC RECORDS**

Contractors and any subcontractor shall comply with section 119.0701, Florida Statutes. Contractor and any subcontractor are to allow public access to all documents, papers, letters, or other material made or received by Contractor in conjunction with the Contract, unless the records are exempt from Article I, section 24(a), Florida Constitution and section 119.07(1)(a), Florida Statutes. Pursuant to section 119.10(2)(a), Florida Statutes, any person who willfully and knowingly violates any of the provisions of chapter 119, Florida Statutes, commits a misdemeanor of the first degree, punishable as provided in sections 775.082 and 775.083, Florida Statutes.

### **RECORDS**

The City of Port St. Lucie is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law, and as may be amended from time to time. CONTRACTOR'S RESPONSIBILITY FOR COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES. Pursuant to Section 119.0701, F.S.

Contractor agrees to comply with all public records laws, specifically to:

Keep and maintain public records required by the City in order to perform the service;

1. The timeframes and classifications for records retention requirements must be in accordance with the [General Records Schedule GS1-SL for State and Local Government Agencies](#).
2. During the term of the Contract, the Contractor shall maintain all books, reports, and records in accordance with generally accepted accounting practices and standards for records directly related to this Contract.
3. Records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the City. Contractor's records under this Contract include but are not limited to, supplier/subcontractor invoices and contracts, project documents, meeting notes, emails, and all other documentation generated during this Contract.
4. The Contractor agrees to make available to the City, during normal business hours all books of account, reports, and records relating to this Contract.
5. A Contractor who fails to provide the public records to the City within a reasonable time may also be subject to penalties under Section 119.10, Florida Statutes, and as may be amended from time to time.

Upon request from the City'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 this chapter or as otherwise provided by law.

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 City.

Upon completion of the Contract, transfer, at no cost to the City, all public records in possession of the Contractor, or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City 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, but may destroy such records after seven (7) years as permitted by law. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AND AS MAY BE AMENDED FROM TIME TO TIME, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK  
121 SW Port St. Lucie Blvd.  
Port St. Lucie, FL 34984  
(772) 871-5157  
pr@cityofpsl.com**

**SECTION VI  
TAXES**

Contractor shall be responsible for all federal, state, and local taxes and other charges related to the performance of this Contract.

**SECTION VII  
CONTRACTUAL RELATIONSHIP**

Nothing in the Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the vested parties. Neither Contractor nor any of Contractor's agents, employees, subcontractors, or contractors shall become or be deemed to become agents, or employees of the City. Contractor shall therefore be responsible for compliance with all laws, rules, and regulations involving its employees and any subcontractors, including but not limited to employment of labor, hours of labor, health, and safety, working conditions, workers' compensation insurance, and payment of wages. No party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to the Contract.

**SECTION VIII  
ASSIGNMENT**

Contractor shall not delegate, assign, or subcontract any part of the work under this Contract or assign any monies due him hereunder without first obtaining the written consent of the City. However, Contractor may assign this Contract without such consent but upon written notice if an entity purchases all or substantially all of Contractor's assets, Contractor merges, or Contractor's parent company merges, with another entity, so long as the assignee agrees to assume all rights and obligations under this Contract in an assignment and assumption with the City

**SECTION IX  
TERMINATION AND DELAYS**

**Termination for Cause – Default Event** – If either Party materially breaches any term of this Contract and fails to cure such breach within 30 days after receiving written notice by the non-breaching Party the non-breaching Party may terminate this Contract. However, if the breach is a

cyber security incident that puts either Party at risk, the breaching party is required to take all reasonably necessary measures to cure immediately. Neither Party shall have the right to terminate this Contract early without a legally valid cause.

**Termination for Convenience** - The City may, at any time, with or without cause, or for its convenience, terminate all or a portion of the Contract upon thirty (30) days written notice to Contractor. Any such termination shall be accomplished by delivery in writing of a notice to Contractor. Such termination shall be effective at the end of the then-current annual term. Following termination without cause, the Contractor shall be entitled to compensation upon submission of invoices and proper proof of claim, for services provided under the Contract to the City up to the time of termination, pursuant to Florida law.

**Termination for Non-Appropriation** - The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines that it does not have funds to meet its obligations under the Contract, the City will have the right to terminate the Contract, without penalty, at least thirty (30) days before the beginning of the fiscal year in which funds have not been appropriated.

## **SECTION X** **LAW, VENUE, AND WAIVER OF JURY TRIAL**

This Contract is to be construed as though made in and to be performed in the State of Florida and is to be governed by the laws of Florida in all respects without reference to the laws of any other state or nation. The venue of any action taken to enforce this Contract, arising out of the Contract, or related to the Contract, shall be in St. Lucie County, Florida.

The parties to this Contract hereby freely, voluntarily, and expressly, waive their respective rights to trial by jury on any issues so triable after having the opportunity to consult with an attorney.

## **SECTION XI** **ATTORNEY'S FEES**

In any action or proceeding to enforce rights under this Contract, the prevailing party will be entitled to recover costs and attorneys' fees.

## **SECTION XII** **POLICY OF NON-DISCRIMINATION**

The Contractor shall not discriminate against any person in its operations, activities, or delivery of services under this Contract. The Contractor shall affirmatively comply with all applicable provisions of federal, state, and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

## **SECTION XIII** **CODE OF ETHICS**

Contractor warrants and represents that its employees will abide by any applicable provisions of the State of Florida Code of Ethics in [Chapter 112.311 et seq.](#), Florida Statutes, and Code of Ethics Ordinances in [Section 9.14 of the City of Port St. Lucie Code](#).

#### **SECTION XIV** **SCRUTINIZED COMPANIES**

By entering into this Contract with the City, Contractor certifies that it and those related entities of Contractor as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to § 215.4725, Florida Statutes, and as may be amended from time to time, and are not engaged in a boycott of Israel. The City may terminate this Contract if Contractor or any of those related entities of Contractor as defined by Florida law are found to have submitted a false certification or any of the following occur with respect to the company or a related entity: (i) it has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, or (ii) for any contract for goods or services of one million dollars or more, it has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or it is found to have been engaged in business operations in Cuba or Syria. Notwithstanding the preceding, the City reserves the right and may, in its sole discretion, on a case by case basis, permit a company on such lists or engaged in business operations in Cuba or Syria to be eligible for, bid on, submit a proposal for, or enter into or renew a contract for goods or services of one million dollars or more, or may permit a company on the Scrutinized Companies that Boycott Israel List to be eligible for, bid on, submit a proposal for, or enter into or renew a contract for goods or services of any amount, should the City determine that the conditions set forth in § 287.135(4), Florida Statutes, are met.

#### **SECTION XV** **DISCRIMINATORY, CONVICTED, AND ANTITRUST VIOLATOR VENDOR LISTS**

Contractor certifies that neither it nor any of its affiliates, as defined in the statutes below, have been placed on the discriminatory vendor list under section 287.134, Florida Statutes; the convicted vendor list under section 287.133, Florida Statutes; or the antitrust violator vendor list under section 287.137, Florida Statutes. Absent certain conditions under these statutes, neither contractors nor their affiliates, as defined in the statutes, who have been placed on such lists may submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or contractor under a contract with any public entity; and may not transact business with any public entity.

#### **SECTION XVI** **COOPERATION WITH INSPECTOR GENERAL**



Pursuant to section 20.055, Florida Statutes, it is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section. Contractor understands and will comply with this statute.

## **SECTION XVII** **E-VERIFY**

In accordance with section 448.095, Florida Statutes, the Contractor agrees to comply with the statute, including:

1. Contractor must register with and use the E-Verify system to verify the work authorization status of all new employees of the Contractor. Contractor must provide City with sufficient proof of compliance with this provision before beginning work under this Contract.
2. If Contractor enters into a contract with a subcontractor, Contractor must require each and every subcontractor to provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor shall maintain a copy of each and every such affidavit(s) for the duration of the Contract and any renewals thereafter.
3. The City shall terminate this Contract if it has a good faith belief that a person or an entity with which it is contracting has knowingly violated section 448.09(1), Florida Statutes.
4. Contractor shall immediately terminate any contract with any subcontractor if Contractor has, or develops, a good faith belief that the subcontractor has violated section 448.09(1), Florida Statutes. If City has or develops a good faith belief that any subcontractor of Contractor knowingly violated section 448.09(1) or any provision of section 448.095, Florida Statutes, the City shall promptly notify the Contractor and order the Contractor to immediately terminate the Contract with the subcontractor.
5. The City shall terminate this Contract for violation of any provision in this section. If the Contract is terminated under this section, it is not a breach of contract and may not be considered as such. If the City terminates this Contract under this section, the Contractor may not be awarded a public contract for at least one (1) year after the date on which the Contract was terminated. A contractor is liable for any additional costs incurred by the City as a result of the termination of a contract.
6. The City, Contractor, or any subcontractor may file a cause of action with a circuit or county court to challenge a termination under section 448.095(5)(c) no later than twenty (20) calendar days after the date on which the Contract was terminated. Such a cause of action must be filed in St. Lucie County, as provided herein.

## **SECTION XVIII** **AUDITS**

The Contractor shall establish and maintain a reasonable accounting system that enables the City to readily identify the Contractor's assets, expenses, costs of goods, and use of funds throughout the term of the Contract for a period of at least seven (7) years following the date of final payment or completion of any required audit, whichever is later. Records shall include, but are not limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; backcharge logs and supporting documentation; insurance documents;

payroll documents; timesheets; memoranda; and correspondence. The Contractor shall permit the City's authorized auditor or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and to make copies of all books, documents, papers, electronic or optically stored and created records, or other records relating or pertaining to this Contract kept by or under the control of the Contractor, including, but not limited to, those kept by the Contractor, its employees, agents, assigns, successors, and subcontractors. Such records shall be made available to the City during normal business hours at the Contractor's office or place of business. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the City reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed ninety (90) days) from presentation of the City's findings to the Contractor. Evidence of criminal conduct will be turned over to the proper authorities.

In no event shall any audit occur: (1) more than once per calendar year, (2) without giving at least three business days prior written notice (3) outside of Contractor's normal business hours, or (4) on systems where such audit may violate its third party confidentiality obligations. The only exception to these limits is if the City is audited.

The Contractor shall also ensure the City has these rights with Contractor's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to the City.

## **SECTION XIX** **CONSTRUCTION**

The title of the section and paragraph headings in this Contract are for reference only and shall not govern, suggest, or affect the interpretation of any of the terms or provisions within each provision or this Contract as a whole. The use of the term "including" in this Contract shall be construed as "including, without limitation." Where specific examples are given to clarify a general statement, the specific language shall not be construed as limiting, modifying, restricting, or otherwise affecting the general statement. All singular words and terms shall also include the plural, and vice versa. Any gendered words or terms used shall include all genders. Where a rule, law, statute, or ordinance is referenced, it indicates the rule, law, statute, or ordinance in place at the time the Contract is executed, as well as may be amended from time to time, where application of the amended version is permitted by law.

The parties have participated jointly in the negotiation and drafting of this Contract, and agree that both have been represented by counsel and/or had sufficient time to consult counsel, before entering into this Contract. In the event an ambiguity, conflict, omission, or question of intent or interpretation arises, this Contract shall be construed as if drafted jointly by the parties, and no presumption or burden of proof or persuasion based on which party drafted a provision of the Contract.

## **SECTION XX**

## **SEVERABILITY**

If any provision of this Contract is judicially or administratively held invalid the remainder of the Contract will remain binding upon the parties, unless the inoperative provision would cause enforcement of the remainder of this Contract to be inequitable under the circumstances.

## **SECTION XXI** **NON-EXCLUSIVITY**

Contractor acknowledges and agrees that this Contract is non-exclusive.

## **SECTION XXII** **CONFLICT**

In the event of any conflict between the terms within this Contract and any exhibits attached hereto, the terms of this Contract shall control. Unless expressly agreed to within the Contract, any reference to terms, conditions, requirements, or similar provisions, including those pointing to such provisions on a website or link, shall have no force or effect.

## **SECTION XXIII** **FORCE MAJEURE**

Any deadline provided for in this Contract may be extended, as provided in this paragraph, if the deadline is not met because of one of the following conditions occurring with respect to that particular project or parcel: fire, strike, explosion, power blackout, earthquake, volcanic action, flood, war, civil disturbances, terrorist acts, hurricanes, and Acts of God. When one of the foregoing conditions interferes with Contract performance, then the party affected may be excused from performance on a day-for-day basis to the extent such party's obligations relate to the performance so interfered with; provided, the party so affected shall use reasonable efforts to remedy or remove such causes of non-performance. The party so affected shall not be entitled to any additional compensation by reason of any day-for-day extension hereunder.

## **SECTION XXIV** **ENTIRE AGREEMENT**

This Contract sets forth the entire agreement between Contractor and City with respect to the subject matter of this Contract. This Contract supersedes all prior and contemporaneous negotiations, understandings, and agreements, written or oral, between the parties. This Contract may not be modified except by the parties' mutual agreement set forth in writing and signed by the parties.

NASPO ValuePoint  
**PARTICIPATING ADDENDUM**

**CLOUD SOLUTIONS**

Administered by the State of Utah (hereinafter "Lead State")

**Alternative Contract Source No: 43230000-NASPO-16-ACS**

**Carahsoft**

Master Agreement No: AR2472  
(hereinafter "Contractor")

And

**Florida Department of Management Services**

(hereinafter "Department/Participating State/Entity")

The State of Utah, acting by and through the National Association of State Procurement Officials (NASPO) ValuePoint, competitively procured and awarded a Request for Proposal resulting in Master Agreement number AR2472. The Master Agreement was created as a cooperative purchasing agreement for Cloud Solutions. This Participating Addendum is entered into pursuant to Section 287.042, Florida Statutes.

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." Accordingly, agencies and eligible users (Customer) may make purchases from this Participating Addendum pursuant to the terms and conditions herein.

The Department evaluated the Master Agreement, and hereby acknowledges that use of the Master Agreement as an alternative contract source is cost-effective and in the best interest of the State.

This Participating Addendum and all incorporated Exhibits, set forth the entire understanding of the Parties and supersedes all prior agreements.

Accordingly, the Parties agree as follows:

**1. Term and Effective Date**

The initial term of this Participating Addendum will become effective on the date the document is signed by all Parties, and shall be effective through September 30, 2020, unless terminated earlier in accordance with the General Contract Conditions.

**2. Renewal**

Upon agreement of the Parties, the Department and the Contractor may renew this Participating Addendum in accordance with section 287.057(13), Florida Statutes, and Rule 60A-1.048, Florida Administrative Code. Renewals must be in writing and are subject to the same terms, conditions, and modifications set forth in this Participating Addendum. Renewal determinations will be based upon utilization and achieved savings.

**3. Modifications or Additions to Master Agreement**

The following changes are modifying or supplementing the Master Agreement terms and conditions.

a. Scope:

The Contractor's Master Agreement products or services listed on the Contractor's page of the NASPO ValuePoint website are included in this contract only if they are not offered on a State Term Contract.

In accordance to 74-3.004, F.A.C., Agency requests for Infrastructure as a Service (IaaS) must be submitted via a Service Request to the State Data Center.

- b. Exhibits: All Exhibits attached and listed below are incorporated in their entirety into, and form part of this Participating Addendum. The Participating Addendum Exhibits shall have priority in the order listed:

- 1) Exhibit A: Contract Conditions, Florida General
- 2) Exhibit B: Contract Conditions, Florida Special
- 3) Exhibit C: NASPO ValuePoint Master Agreement Number AR2472

If a conflict exists among any of the documents, the following shall have priority in the order listed below:

- 1) The Addendum
- 2) Florida Special Contract Conditions, Exhibit B
- 3) Florida General Contract Conditions, Exhibit A
- 4) NASPO ValuePoint Master Agreement Number AR2472 Exhibit C

- c. Participation: Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
- d. Access to Cloud Solutions Services Requires State CIO Approval: Unless otherwise stipulated in this Participating Addendum, specific services accessed through the NASPO ValuePoint cooperative Master Agreements for Cloud Solutions by state executive branch agencies are subject to the authority and prior approval of the State Chief Information Officer's Office. The State Chief Information Officer means the individual designated by the state Governor within the Executive Branch with enterprise-wide responsibilities for leadership and management of information technology resources of a state. Any agency requests for Infrastructure as a Service must be submitted via a service request to the state data center. See section 3.a. above.
- e. Authorization: Approval of this Participating Addendum by the State Chief Procurement Official and State Chief Information Officer is an authorization for participation in the NASPO cooperative contract process, it is not intended as an approval of any specific purchase or solution. It is the responsibility of the Customer to validate all terms and conditions and to ensure compliance with all applicable statutes and rules.
- f. Request for Quotes: Customers purchasing Cloud Solutions from this Participating Addendum shall create a Request for Quote (RFQ), each time they desire to purchase Cloud Solutions. The Customer shall issue a detailed RFQ to the ACS Contractor(s) who offer the applicable cloud solutions(s). The specific format of the RFQ is left to the discretion of the Customer, but must contain the following:
- 1) Applicable service and deployment model(s);
  - 2) Data security classification;
  - 3) Service level agreement requirements; and
  - 4) Exit strategy considerations.

- g. **Enterprise Agreements:** The Contractor shall honor any Volume or Enterprise Agreement(s) established between a State of Florida agency and the manufacturer of products or services offered under their Master Agreement.
- h. **Purchase Orders:** Customers shall issue purchase orders under this Participating Addendum to their awarded RFQ Contractor using this State of Florida ACS number 43230000-NASPO-16-ACS. The purchase order period survives the expiration of the Contract. The duration of purchase orders must not exceed the expiration of the Contract by more than 12 months.
- i. **Contractor Selection Justification Form:** Customers purchasing Cloud Solutions from this Participating Addendum shall attach to the purchase order a completed Contractor Selection Justification Form (Attachment A).

#### 4. Warranty of Authority

Each person signing this document warrants that he or she is duly authorized to do so and to bind the respective party.

#### 5. Entire Agreement of the Parties



This document and the attached exhibits constitute the Participating Addendum and the entire understanding of the parties.

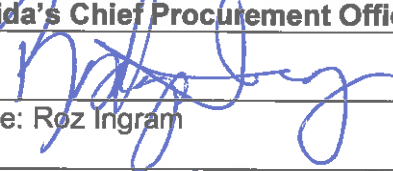
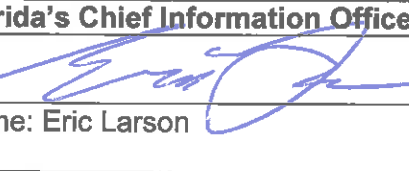
#### 6. Amendments

All modifications to this Participating Addendum must be in writing and signed by all Parties. No oral modifications to this Participating Addendum are permitted.

Notwithstanding the order listed in section 3b, amendments executed after the Participating Addendum is executed may expressly change the provisions of the Participating Addendum. If they do so expressly, then the most recent amendment will take precedence over anything else that is part of the Participating Addendum.

**IN WITNESS THEREOF**, the Parties hereto have caused this agreement, which includes the attached and incorporated Exhibits, to be executed by their undersigned officials as duly authorized. This agreement is not valid and binding until signed and dated by the Parties.

<b>Participating State: Florida</b>	<b>Contractor: Carahsoft</b>
By: 	By: 
Name: Dave Zeckman	Name: Robert R. Moore
Title: Chief of Staff	Title: Vice President
Date: 7/31/2017	Date: June 26, 2017

<b>Florida's Chief Procurement Officer:</b>	<b>Florida's Chief Information Officer</b>
By: 	By: 
Name: Roz Ingram	Name: Eric Larson
Title: Director of State Purchasing and Chief Procurement Officer	Title: Executive Director of the Florida Agency for State Technology and Chief Information Officer
Date: 7/28/17	Date: 7/28/17

**Alternate Contract Source No. 43230000-NASPO-16-ACS**

**Exhibit A**  
**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. TERMINATION.**

- 2.1 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.

## **2.2 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 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.

### **3.2 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.

### **3.3 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.

### **3.4 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.

### **3.5 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.

### **3.6 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 Purchase Order and any attachments to the Purchase Order.

**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 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.

#### **5.2 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.

#### **5.3 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.

#### **5.4 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.

## **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.**

All contactors, dealers, and resellers authorized by the Department, as shown on the dedicated Contractor NASPO ValuePoint website, are approved to provide sales and service support to participants in the Master Agreement. The Contractor's dealer participation will be in accordance with the terms and conditions set forth in the Master Agreement. 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 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.

## **6.6 Information Technology Standards**

Pursuant to sections 282.0051 and 282.318, F.S., the Agency for State Technology (AST) is to establish standards for the implementation and management of information technology resources. Vendors agree to cooperate with the state agency in furtherance of the state agency's efforts to comply with AST standards, established in Rule Chapter 74, F.A.C, as applicable.

## **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

## **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/>.

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

### **9.1 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.

### **9.2 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.

**9.3 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.

**9.4 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 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.

**SECTION 12. CONTRACT AUDITS.**

**12.1 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 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.

### **13.2 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

### **13.3 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.



**Alternate Contract Source  
No. 43230000-NASPO-16-ACS**

**EXHIBIT B  
FLORIDA SPECIAL CONTRACT CONDITIONS**

This Exhibit contains the Special Contract Conditions. If a conflict exists between the Special Contract Conditions and the General Contract Conditions, the Special Contract Conditions shall take precedence over the General Contract Conditions unless the conflicting term in the General Contract Conditions is required by Florida law, in which case the General Contract Conditions term will take precedence.

Special Contract Conditions are as follows:

**Section 1      Delays and Complaints**

Delivery delays and service complaints will be monitored on a continual basis. Documented inability to perform under the conditions of the contract, via the established Complaint to Vendor process (PUR 7017 form), may result in default proceedings and cancellation.

**Section 2      Monthly Transaction Fee Report**

The Contractor is required to submit monthly Transaction Fee Reports electronically through MFMP VIP. All such reports and payments shall be subject to audit. Failure to comply with the payment of the Transaction Fees or reporting of transactions shall constitute grounds for declaring the Contractor in default and subject the Contractor to exclusion from business with the State of Florida.

For information on how to submit Transaction Fee Reports online, please reference the detailed fee reporting instructions and Vendor training presentations available online through MFMP U on the MyFloridaMarketPlace website (located at <http://dms.myflorida.com/mfmp>). Assistance is also available from the MyFloridaMarketPlace Customer Service Desk at [feeprocessing@myfloridamarketplace.com](mailto:feeprocessing@myfloridamarketplace.com) or 866-FLA-EPRO (866-352-3776) between the hours of 8:00 AM to 6:00 PM, Eastern Time.

**Section 3      Quarterly Sales Reports**

Each Contractor shall submit a sales report to the Department on a Quarterly basis.

Contract Sales Reports must include the Contractor's name, the dates of Quarter covered, each Customer's name, services provided (to include identification of the cloud solution and service model), and the amount paid by the Customer.

Initiation and submission of the Contract Sales Reports are to be the responsibility of the Contractor. The Contractor will submit the completed Sales Report forms by email to the Department Contract Manager no later than the due date indicated in Section 10. Submission of these reports is considered a material requirement of this Contract and the Contractor.

Failure to provide quarterly sales reports, including those indicating no sales, within thirty (30) calendar days following the end of each quarter (January, April, July and October) is considered as Non-Performance by the Contractor. Exceptions may be made if a delay in submitting reports is attributable to circumstances that are clearly beyond the control of the Contractor. The burden of proof of unavoidable delay shall rest with the Contractor and shall be supplied in a written form and submitted to the Department.

The Department reserves the right to request additional sales information as needed.

**Section 4      Quarterly Reporting Timeframes**

Quarterly reporting timeframes coincide with the State Fiscal Year as follows:

- Quarter 1 - (July-September) – Due by October 10
- Quarter 2 - (October-December) – Due by January 10
- Quarter 3 - (January-March) – Due by April 10
- Quarter 4 - (April-June) – Due by July 10

**Section 5      Business Review Meetings**

The Department reserves the right to schedule business review meetings as frequently as necessary. The Department will provide the format for the Contractor's agenda. Prior to the meeting, the Contractor shall submit the completed agenda to the Department for review and acceptance. The Contractor shall address the agenda items and any of the Department's additional concerns at the meeting. Failure to comply with this section may result in the Contractor being found in default and contract termination.

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**AMENDMENT NO.: 2 - Renewal**

Alternate Contract Source No.: 43230000-NASPO-16-ACS

Alternate Contract Source Name: Cloud Solutions

This Amendment No. 2 ("Amendment") effective as of October 1, 2020, to the Cloud Solutions Agreement, Contract No. 43230000-NASPO-16-ACS ("ACS" or "Contract") is made by and between the State of Florida, Department of Management Services ("Department"), and Carahsoft ("Contractor"), collectively referred to herein as the "Parties," is effective upon execution by both Parties. All capitalized terms used herein have the meaning assigned to them in the ACS unless otherwise defined herein.

**WHEREAS** the ACS was entered into by the Parties on July 31, 2017, to continue through September 30, 2020, for the provision of Cloud Solutions, pursuant to State of Utah Master Agreement No. AR2472;

**WHEREAS** the Parties agreed that the ACS may be amended by mutual agreement as provided in Section 6., "Amendments," of the ACS; and

**WHEREAS** the Parties agreed that the ACS may be renewed as provided in Section 2, "Renewal," of the ACS.

**THEREFORE**, in consideration of the mutual promises contained below, and other good and valuable consideration, receipt, and sufficiency of which are hereby acknowledged, the Parties agree to the following:

**I. ACS Amendment.** The ACS is amended to replace Exhibit A: Florida General Contract Conditions in its entirety with Exhibit D: Special Contract Conditions. Any and all references in the ACS to terms and conditions are hereby replaced with the attached Exhibit D: Special Contract Conditions, which are incorporated into the ACS by reference herein.

**II. ACS Amendment.** The ACS is amended to replace Exhibit B: Florida Special Contract Conditions in its entirety with Exhibit C: Additional Special Contract Conditions, which are incorporated into the ACS by reference herein.

**III. ACS Renewal.** The ACS is hereby renewed for a period of six (6) years, with a new expiration date of September 30, 2026, under the same terms and conditions, except as amended herein.

**IV. Warranty of Authority.** Each person signing this Amendment warrants that he or she is duly authorized to do so and to bind the respective party.

**V. Conflict.** To the extent any of the terms of this Amendment conflict with the terms of the ACS, the terms of this Amendment shall control.



**AMENDMENT NO.: 2 - Renewal**

Alternate Contract Source No.: 43230000-NASPO-16-ACS

Alternate Contract Source Name: Cloud Solutions

**VI. Effect.** Unless otherwise modified by this Amendment, all terms and conditions contained in the ACS, as previously amended, shall continue in full force and effect.

**IN WITNESS WHEREOF**, the Parties have executed this Amendment by their duly authorized representatives.

**State of Florida:**  
**Department of Management Services**

By:   
Name: **Patrick Gillespie**  
Title: **Deputy Secretary**

**Date:** 9/22/2020 | 4:45 PM EDT

**Contractor:**  
**Carahsoft**

By:   
Name: **Colby Bender**  
Title:

Contracts Team Lead

**Date:** 9/22/2020 | 4:38 PM EDT



## **ADDITIONAL SPECIAL CONTRACT CONDITIONS**

### **Exhibit C**

The Contractor and Customers acknowledge and agree to be bound by the terms and conditions of the Master Agreement except as otherwise specified in the Department's Contract as modified and supplemented by the Special Contract Conditions and these Additional Special Contract Conditions.

Contractor acknowledges that the Participating State is an agency of the State of Florida and as such, the Contract will include the terms and conditions in these Additional Special Contract Conditions. All references to the Contract in these Additional Special Contract Conditions include the terms and conditions herein.

- A. Information Technology Standard: Pursuant to section 282.0051 and 282.318, F.S. the Department is to establish standards for the implementation and management of information technology resources. Contractor agrees to cooperate with the Department and Customer in furtherance of efforts to comply with the standards, established in Rule Title 60GG, F.A.C., as applicable.
- B. Annual Certification: At the request of the Department or the Customer, the Contractor will submit an annual certification demonstrating compliance with the Warranty of Security in accordance with the standards established in Rule Title 60GG, F.A.C.
- C. Orders: Contractor must be able to accept the State of Florida Purchasing Card and MyFloridaMarketPlace (MFMP) purchase orders.
- D. E-Verify: The following language replaces Section 13.2, E-Verify, of the Special Contract Conditions:

The Contractor (and its subcontractors) have an obligation to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees. By executing this Contract (Amendment), the Contractor certifies that it is registered with, and uses, the E-Verify system for all newly hired employees. The Contractor must obtain an affidavit from its subcontractors in accordance with paragraph (2)(b) of section 448.095, F.S., and maintain a copy of such affidavit for the duration of the Contract. The Contractor shall provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five days of Contract execution.

This section serves as notice to the Contractor regarding the requirements of section 448.095, F.S., specifically sub-paragraph (2)(c)1, and the Department's obligation to terminate the Contract if it has a good faith belief that the Contractor has knowingly violated section 448.09(1), F.S. If terminated for such reason, the Contractor will not



be eligible for award of a public contract for at least one year after the date of such termination. The Department reserves the right to order the immediate termination of any contract between the Contractor and a subcontractor performing work on its behalf should the Department develop a good faith belief that the subcontractor has knowingly violated section 448.095(1), F.S.

- E. Contractor and Applicable Subcontractors, Affiliates, Partners, Resellers, Distributors, and Dealers: By execution of a Contract, the Contractor acknowledges that it will not be released of its contractual obligations to the Department because of any failure of a subcontractor, reseller, distributor, or dealer. The Contract terms are applicable to subcontractors, resellers, distributors, and dealers and shall apply to the Contractor's Applicable Subcontractors, Affiliates, Partners, Resellers, Distributors, and Dealers providing commodities and performing services in furtherance of the Contract. The Contractor is fully responsible for satisfactory completion of all work performed under the Contract.
- F. Purchases Prerequisites: Before fulfilling any Customer purchases and receiving payment, the Contractor and applicable Subcontractors, Affiliates, Partners, Resellers, Distributors, and Dealers must have met the following requirements, unless further notated below:
- Have an active registration with the Florida Department of State, Division of Corporations ([www.sunbiz.org](http://www.sunbiz.org)), or, if exempt from the registration requirements, provide the Department with the basis for such exemption.
  - Be registered in the MFMP Vendor Information Portal (<https://vendor.myfloridamarketplace.com>) \*only required by applicable Subcontractors, Affiliates, Partners, Resellers, Distributors, and Dealers if receiving payment.
  - Not be on the State's Convicted, Suspended, or Discriminatory Vendor 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>) \*only required by applicable Subcontractors, Affiliates, Partners, Resellers, Distributors, and Dealers if receiving payment.
- G. MFMP 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:
- 1) 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.

2) PO Flip via AN

This 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.

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 MFMP. 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 MFMP 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 Reporting: The Contractor shall provide the following reports associated with this Contract.

- 1) Contract Quarterly Sales Reports. The Contractor shall submit Quarterly Sales Reports to the Department's Contract Manager within 30 calendar days after the close of each State fiscal quarter (the State's fiscal quarters close on September 30, December 31, March 31, and June 30). The Contractor's first Quarterly Sales Report will be due 30 calendar days after the first full quarter following Contract execution. Reports must be submitted in MS Excel format and can be retrieved by accessing the following link at [FL DMS Quarterly Sales Report Form](#). The report shall include all Customer sales received and associated with this Contract during the quarter. Initiation and submission of the Quarterly Sales Report is the responsibility of the Contractor without prompting or notification from the Department's Contract Manager. If no orders are received during the period, the Contractor must submit a report stating that there was no activity. If the Contractor fails to submit two consecutive quarterly sales reports, the Contract may be terminated, or the Department may choose to not renew the Contract.
- 2) Certified and Minority Business Enterprises Reports. Upon Customer request, the Contractor shall report to each Customer, spend with certified and other minority business enterprises in the provision of commodities or services related to the Customer orders. These reports shall include the period covered; the name, minority



code, and Federal Employer Identification Number of each minority business enterprise utilized during the period; commodities and services provided by the minority business enterprise; and the amount paid to each minority business enterprise on behalf of the Customer.

- 3) Ad Hoc Sales Reports. The Department may require additional Contract sales information such as copies of purchase orders or ad hoc sales reports. The Contractor shall submit these documents and reports within the timeframe specified by the Department.
  - 4) MFMP Transaction Fee Reports. The Contractor shall submit monthly MFMP Transaction Fee Reports to the Department. Reports are due 15 calendar days after the end of each month. Information on how to submit MFMP Transaction Fee Reports online can be located on the [Transaction Fee and Reporting website](#). Assistance with the transaction fee reporting system is also available from the MFMP Customer Service Desk by email at [feeprocessing@myfloridamarketplace.com](mailto:feeprocessing@myfloridamarketplace.com) or telephone at 866-FLA-EPRO (866-352-3776) from 8:00 a.m. to 6:00 p.m. Eastern Time.
- I. Financial Consequences: The following financial consequences will apply for the Contractor's non-performance of the provision of the Quarterly Sales Reports and the MFMP Transaction Fee Reports. The State of Florida reserves the right to withhold payment or implement other appropriate remedies, such as Contract termination or nonrenewal, when the Contractor has failed to comply with these provisions of the Contract. The Contractor and the Department agree that the financial consequences for non-performance are an estimate of damages which are difficult to ascertain and are not penalties.

The financial consequences will be paid via check or money order and made out to the Department of Management Services in U.S. dollars within 30 calendar days after the required report submission date. These consequences are individually assessed for failures over each target period beginning with the first full month or quarter of the contract performance and every month or quarter, respectively, thereafter.

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### Financial Consequences Chart

Deliverable	Performance Metric	Performance Due Date	Financial Consequence for Non-Performance (Per Calendar Day Late/Not Received by the Contract Manager)
Contractor will timely submit complete Quarterly Sales Reports	All Quarterly Sales Reports will be submitted timely with the required information	Reports are due on or before the 30 <sup>th</sup> calendar day after the close of each State fiscal quarter	\$250
Contractor will timely submit complete MFMP Transaction Fee Reports	All MFMP Transaction Fee Reports will be submitted timely with the required information	Reports are due on or before the 15 <sup>th</sup> calendar day after the close of each month	\$100

Quarterly reporting timeframes coincide with the State Fiscal Year as follows:

- Quarter 1 - (July-September) – due 30 calendar days after close of the period
- Quarter 2 - (October-December) – due 30 calendar days after close of the period
- Quarter 3 - (January-March) – due 30 calendar days after close of the period
- Quarter 4 - (April-June) – due 30 calendar days after close of the period

The Department may not consider renewal of a Contract or price adjustments if the Contractor is late on submitting required reports or for outstanding fees owed.

- J. Business Review Meetings: Both the Department and Customer reserve the right to schedule business review meetings. The Department or Customer will provide the format for the Contractor's agenda. In the event the Department or Customer schedules a business review meeting, the Contractor shall submit the completed agenda to the Department or Customer for review and acceptance prior to the meeting. The Contractor shall address the agenda items and any of the Department's or Customer's additional concerns at the meeting. At a minimum, the agenda items may include:
- a. Contract compliance
  - b. Savings report (in dollar amount and cost avoidance)
  - c. Spend reports by Customer
  - d. Recommendations for improved compliance and performance

Failure to comply with this section may result in the Contractor being placed on a Corrective Action Plan and possible termination of the Contract.

Exhibit D

SPECIAL CONTRACT CONDITIONS  
JULY 1, 2019 VERSION

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**In accordance with Rule 60A-1.002(7), F.A.C., Form PUR 1000 is included herein by reference but is superseded in its entirety by these Special Contract Conditions.**

## **SECTION 1. DEFINITION.**

The following definition applies in addition to the definitions in Chapter 287, Florida Statutes (F.S.), and Rule Chapter 60A-1, Florida Administrative Code (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 documents 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 documents, and in accordance with section 287.057(13), F.S.

### **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. The Customer may 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 the suspension. After receiving a suspension notice, the Contractor must comply with the notice and will cease the performance of the Contract or purchase order. Suspension of work will not entitle the Contractor to any additional compensation. The Contractor will not resume performance of the Contract or purchase order until so authorized by the Department.

#### **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 performance of the Contractor is not in compliance with the Contract requirements or the Contractor has defaulted, the Department may:

- (a) immediately terminate the Contract;
- (b) notify the Contractor of the noncompliance or default, require correction, and specify the date by which the correction must be completed before the Contract is terminated; 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 documents.

#### **3.2 Price Decreases.**

The following price decrease terms will apply to the Contract:

**3.2.1 Quantity Discounts.** Contractor may offer additional discounts for one-time delivery of large single orders;

**3.2.2 Preferred Pricing.** The Contractor guarantees that the pricing indicated in this Contract is a maximum price. Additionally, Contractor's pricing will not exceed the pricing offered under comparable contracts. Comparable contracts are those that are similar in size, scope, and terms. In compliance with section 216.0113, F.S., Contractor must annually submit an affidavit from the Contractor's authorized representative attesting that the Contract complies with this clause.

**3.2.3 Sales Promotions.** In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, the Contractor may conduct sales promotions involving price reductions for a specified lesser period. The 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 invoices to the Customer after delivery and acceptance of commodities or contractual services is confirmed by the Customer. Invoices must contain sufficient detail 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 and, if applicable, the Contractor must provide commodities or contractual services pursuant to purchase orders. Purchase orders issued pursuant to the Contract must be received by the Contractor no later than the close of business on the last day of the Contract's term. The Contractor is required to accept timely purchase orders specifying delivery schedules that extend beyond the Contract term even when such extended delivery will occur after expiration of the Contract. Purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the Contract shall survive the termination or expiration of the Contract and apply to the Contractor's performance. The duration of purchase orders for recurring deliverables shall not exceed the expiration of the Contract by more than twelve months. Any purchase order terms and conditions conflicting with these Special Contract Conditions shall not become a part of the Contract.

#### **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), F.S. 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, F.A.C., 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.

Taxes, customs, and tariffs on commodities or contractual services purchased under the Contract will not be assessed against the Customer or Department unless authorized by Florida law.

### 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. The Contractor must return any overpayment within forty (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 as specified in the Contract. Additionally, the terms of the Contract supersede the terms of all prior agreements between the Parties on this subject matter.

### 4.2 Notices.

All notices required under the Contract must be delivered to the designated Contract Manager in a manner identified by the Department.

### 4.3 Department's Contract Manager.

The Department's Contract Manager, who is primarily responsible for the Department's oversight of the Contract, will be identified in a separate writing to the Contractor upon Contract signing in the following format:

Department's Contract Manager Name

Department's Name  
Department's Physical Address  
Department's Telephone #  
Department's Email Address

If 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, who is primarily responsible for the Contractor's oversight of the Contract performance, will be identified in a separate writing to the Department upon Contract signing in the following format:

Contractor's Contract Manager Name  
Contractor's Name  
Contractor's Physical Address  
Contractor's Telephone #  
Contractor's Email Address

If 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.

##### 4.5.1 Office of Supplier Diversity.

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).

##### 4.5.2 Diversity Reporting.

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 agency 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 RESPECT and the commodities or contractual services it offers is available at <https://www.respectofflorida.org>.

#### 4.7 PRIDE.

Subject to the agency determination provided for in sections 287.042(1) and 946.515, 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 <https://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, if applicable, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. The provisions of subparagraphs 287.058(1)(a)-(c), and (g), F.S., are hereby incorporated by reference.

#### 5.2 Dispute Resolution, Governing Law, and Venue.

Any dispute concerning performance of the Contract shall be decided by the Department's designated Contract Manager, who will reduce the decision to writing and serve a copy on the Contractor. The decision of the Contract Manager shall be final and conclusive. Exhaustion of this administrative remedy is an absolute condition precedent to the Contractor's ability to pursue legal action related to the Contract or any other form of dispute resolution. 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 all privileges and rights relating to venue it may have under Chapter 47, F.S., 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.

Consistent with Title XXXVI, F.S., the Contractor and any subcontractors that assert status, other than a sole proprietor, must provide the Department with conclusive evidence 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.

#### 5.4 Suspended, Convicted, and Discriminatory Vendor Lists.

In accordance with sections 287.042, 287.133, and 287.134, F.S., an entity or affiliate who is on the Suspended Vendor List, Convicted Vendor List, or 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 Suspended Vendor List, Convicted Vendor List, or Discriminatory Vendor List during the term of the Contract.

#### 5.5 Scrutinized Companies - Termination by the Department.

The Department may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), F.S., or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

#### 5.6 Cooperation with Inspector General and Records Retention.

Pursuant to section 20.055(5), F.S., the Contractor understands and will comply with its 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 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 the longer of five years after the expiration of the Contract, or the period required by the General Records Schedules maintained by the Florida Department of State, at the Department of State's Records Management website. 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. The Contractor agrees to impose the same obligations to cooperate with the Inspector General and retain records on any subcontractors used to provide goods or services under the Contract.

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

#### 6.1 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 its subcontracted work. The Department supports diversity in its procurements and contracts, and requests that the 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.

#### 6.2 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. However, the Contractor may waive its right to receive payment and assign same upon notice to the Department. In the event of any assignment, the Contractor remains responsible for performance of the Contract, unless such responsibility is expressly waived by the Department. The Department may assign the Contract with prior written notice to the Contractor.

#### 6.3 Independent Contractor.

The Contractor and its employees, agents, representatives, and subcontractors are independent contractors and not employees or agents of the State of Florida and are not entitled to State of Florida benefits. The Department and Customer 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 its subcontracts under the Contract.

#### 6.4 Inspection and Acceptance of Commodities.

##### 6.4.1 Risk of Loss.

Matters of inspection and acceptance are addressed in section 215.422, F.S. 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.

##### 6.4.2 Rejected Commodities.

When a Customer rejects a commodity, Contractor will remove the commodity from the premises within ten (10) calendar days after notification of rejection, and the risk of loss will remain with the Contractor. Commodities not removed by the Contractor within ten (10) calendar days will be deemed abandoned by the Contractor, and the Customer will have the right to dispose of such commodities. Contractor will reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected commodities.

#### 6.5 Safety Standards.

Performance of the Contract for all commodities or contractual services must comply with requirements of the Occupational Safety and Health Act and other applicable State of Florida and federal requirements.

#### 6.6 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.

#### 6.7 Time is of the Essence.

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

#### 6.8 Waiver.

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

#### 6.9 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.

#### 6.10 Cooperative Purchasing.

Pursuant to their own governing laws, and subject to the agreement of the Contractor, governmental entities that are not Customers may make purchases under the terms and conditions contained herein, if agreed to by Contractor. Such purchases are independent of the Contract between the Department and the Contractor, and the Department is not a party to these transactions. Agencies seeking to make purchases under this Contract are required to follow the requirements of Rule 60A-1.045(5), F.A.C.

### **SECTION 7. LIABILITY AND INSURANCE.**

#### 7.1 Workers' Compensation Insurance.

The Contractor shall maintain workers' compensation insurance as required under the Florida Workers' Compensation Law or the workers' compensation law of another jurisdiction where applicable. The Contractor must require all subcontractors to similarly provide workers' compensation insurance for all of the latter's employees. In the event work is being performed by the Contractor under the Contract and any class of employees performing the work is not protected under Workers' 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, products, personal and advertising injury, and completed operations. This insurance must provide coverage for all claims that may arise from performance of the Contract or completed operations, whether by the Contractor or anyone directly or indirectly employed by the Contractor. Such insurance must include the State of Florida as an additional insured for the entire length of the resulting contract. 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 resulting contract.

#### 7.3 Florida Authorized Insurers.

All insurance shall be with insurers authorized and eligible to transact the applicable line of insurance business in the State of Florida. The Contractor shall provide Certification(s) of Insurance evidencing that all appropriate coverage is in place and showing the Department to be an additional insured.

#### 7.4 Performance Bond.

Unless otherwise prohibited by law, the Department may require the Contractor to furnish, without additional cost to the Department, a performance bond or irrevocable letter of credit or other form of security for the satisfactory performance of work hereunder. The Department shall determine the type and amount of security.

#### 7.5 Indemnification.

To the extent permitted by Florida law, the Contractor agrees to indemnify, defend, and hold the Customer and 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 Customer. The Contract does not constitute a waiver of sovereign immunity or consent by the Customer or the State of Florida or its subdivisions to suit by third parties. Without limiting this indemnification, the 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.

#### 7.6 Limitation of Liability.

Unless otherwise specifically enumerated in the Contract or in the purchase order, neither the Department nor the Customer shall be liable 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 Department or Customer has been advised that such damages are possible. Neither the Department nor the Customer shall be liable for lost profits, lost revenue, or lost institutional operating savings. The Department or 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.

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

#### 8.1 Public Records.

##### 8.1.1 Termination of Contract.

The Department may terminate the Contract for refusal by the Contractor to comply with this section by not allowing access to all public records, as defined in Chapter 119, F. S., made or received by the Contractor in conjunction with the Contract.

#### 8.1.2 Statutory Notice.

Pursuant to section 119.0701(2)(a), F.S., for contracts for services with a contractor acting on behalf of a public agency, as defined in section 119.011(2), F.S., the following applies:

**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.**

Pursuant to section 119.0701(2)(b), F.S., for contracts for services with a contractor acting on behalf of a public agency as defined in section 119.011(2), 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 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.

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

8.2.1 Contractor Designation of Trade Secrets or Otherwise Confidential Information. If the Contractor considers any portion of materials to be trade secret under section 688.002 or 812.081, F.S., or otherwise confidential under Florida or federal law, the Contractor must clearly designate that portion of the materials as trade secret or otherwise confidential when submitted to the Department. The Contractor will be

responsible for responding to and resolving all claims for access to Contract-related materials it has designated trade secret or otherwise confidential.

#### 8.2.2 Public Records Requests.

If the Department receives a public records request for materials designated by the Contractor as trade secret or otherwise confidential under Florida or federal law, the Contractor will be responsible for taking the appropriate legal action in response to the request. If the Contractor fails to take appropriate and timely action to protect the materials designated as trade secret or otherwise confidential, the Department will provide the materials to the requester.

#### 8.2.3 Indemnification Related to Confidentiality of Materials.

The Contractor will protect, defend, indemnify, and hold harmless the Department for claims, costs, fines, and attorney's fees arising from or relating to its designation of materials as trade secret or otherwise 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. The Contractor must retain all documents related to the Contract for five (5) 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 the Department of State's Records Management website.

#### 8.4 Intellectual Property.

##### 8.4.1 Ownership.

Unless specifically addressed otherwise in the Contract, the State of Florida shall be the owner of all intellectual property rights to all property created or developed in connection with the Contract.

##### 8.4.2 Patentable Inventions or Discoveries.

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

##### 8.4.3 Copyrightable Works.

Contractor must notify the Department or State of Florida of any publications, artwork, or other copyrightable works developed in connection with the Contract. All copyrights created or developed through performance of the Contract are owned solely by the State of Florida.

## **SECTION 9. DATA SECURITY.**

The Contractor will maintain the security of State of Florida data including, but not limited to, maintaining a secure area around any displayed visible data and ensuring data is stored and secured when not in use. The Contractor and 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 the United States due to Contractor's action or inaction. In the event of a security breach involving State of Florida data, the Contractor shall give notice to the Customer and the Department within one business day. "Security breach" for purposes of this section will refer to a confirmed event that compromises the confidentiality, integrity, or availability of data. Once a data breach has been contained, the Contractor must provide the Department with a post-incident report documenting all containment, eradication, and recovery measures taken. The Department reserves the right in its sole discretion to enlist a third party to audit Contractor's findings and produce an independent report, and the Contractor will fully cooperate with the third party. The Contractor will also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information.

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

### **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's 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 to be used for the purpose of lobbying the Legislature, the judicial branch, or the Department. Pursuant to section 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 is executed and during the Contract term.

### **10.3 Communications.**

#### **10.3.1 Contractor Communication or Disclosure.**

The Contractor shall not make any public statements, press releases, publicity releases, or other similar communications 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, without first notifying the Customer's Contract Manager and securing the Customer's prior written consent.

#### **10.3.2 Use of Customer Statements.**

The Contractor shall not use any statement attributable to the Customer or its employees for the Contractor's promotions, press releases, publicity releases, marketing, corporate communications, or other similar communications, without first notifying the Customer's Contract Manager and securing the Customer's prior written consent.

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

### **11.1 Performance Standards.**

The Contractor agrees to perform all tasks and provide deliverables as set forth in 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.

### **11.2 Performance Deficiencies and Financial Consequences of Non-Performance.**

#### **11.2.1 Proposal of Corrective Action Plan.**

In addition to the processes set forth in the Contract (e.g., service level agreements), if the Department or Customer determines that there is a performance deficiency that requires correction by the Contractor, then the Department or Customer will notify the Contractor. The 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 performance deficiencies identified by the Department or Customer.

#### **11.2.2 Retainage for Unacceptable Corrective Action Plan or Plan Failure.**

If the corrective action plan is unacceptable to the Department or Customer, or implementation of the plan fails to remedy the performance deficiencies, the Department or Customer will retain ten percent (10%) of the total invoice amount. The retainage will be withheld until the Contractor resolves the performance deficiencies. If the performance deficiencies are resolved, the Contractor may invoice the Department or Customer for the retained amount. If the Contractor fails to resolve the performance deficiencies, the retained amount will be forfeited to compensate the Department or Customer for the performance deficiencies.

### **11.3 Performance Delay.**

#### **11.3.1 Notification.**

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 the 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 the 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 and use commercially reasonable efforts to perform its obligations on time notwithstanding the Department's delay.

#### **11.3.2 Liquidated Damages.**

The Contractor acknowledges that delayed performance will damage the Department/Customer, but by their nature such damages are difficult to ascertain. Accordingly, the liquidated damages provisions stated in the Contract documents will apply. Liquidated damages are not intended to be a penalty and are solely intended to compensate for damages.

### **11.4 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 fire, explosion, earthquake, windstorm, flood, radioactive or toxic chemical hazard, war, military hostilities, terrorism, civil emergency, embargo, riot, strike, violent civil unrest, or other similar cause wholly beyond the Contractor's reasonable control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. The foregoing does not excuse delay which could have been avoided if the Contractor implemented any risk mitigation required by the Contract. In case of any delay the Contractor believes is excusable, the Contractor will notify the Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) calendar days after the cause that created 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) calendar 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 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 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 may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers and the Department 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 have conducted performance and/or 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 subcontractors' data and records that directly relate to the Contract. To the extent necessary to verify the Contractor's fees and claims for payment under the Contract, the Contractor's agreements or contracts with subcontractors, partners, or agents of the Contractor, pertaining to the Contract, may be inspected by the Department upon fifteen (15) calendar 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 Inspector General, in accordance with section 5.6, the State of Florida's Chief Financial Officer, 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 in accordance with section 8.3 of these Special Contract Conditions. 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, the State of Florida's Chief Financial Officer, or the Office of the Auditor General.

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

### 13.1 Background Check.

The Department or Customer may require the Contractor to conduct background checks of its employees, agents, representatives, and subcontractors as directed by the Department or Customer. The cost of the background checks will be borne by the Contractor. The Department or Customer 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 (3) calendar days any arrest for any disqualifying offense. The Contractor must notify the Contract Manager within twenty-four (24) hours of all details concerning any reported arrest. Upon the request of the Department or Customer, the Contractor will re-screen any of its employees, agents, representatives, and subcontractors during the term of the Contract.

### 13.2 E-Verify.

The Contractor must use 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 (5) calendar days of Contract execution. If the Contractor is not enrolled in DHS E-Verify System, it will do so within five (5) calendar days of notice of Contract award and provide the Contract Manager a copy of its MOU within five (5) calendar days of Contract execution. The link to E-Verify is <https://www.uscis.gov/e-verify>. Upon each Contractor or subcontractor new hire, the Contractor must provide a statement within five (5) calendar 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 been found guilty of a misdemeanor or felony offense as a result of a trial or has entered a plea of guilty or nolo contendere, regardless of whether adjudication was withheld, within the last six (6) 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 crimes;
- (b) Information technology crimes;

- (c) Fraudulent practices;
- (d) False pretenses;
- (e) Frauds;
- (f) Credit card crimes;
- (g) Forgery;
- (h) Counterfeiting;
- (i) Violations involving checks or drafts;
- (j) Misuse of medical or personnel records; and
- (k) Felony theft.

#### 13.4 Confidentiality.

The Contractor must maintain confidentiality of all confidential data, files, and records related to the commodities or contractual services 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.

### **SECTION 14. WARRANTY OF CONTRACTOR'S 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 Suspended Vendor List, Convicted Vendor List, or the Discriminatory Vendor List, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Department in writing if its ability to perform is compromised in any manner during the term of the Contract.