

ATTACHMENT B

DRAFT CONTRACT FOR SEED-TO-SALE TRACKING SYSTEM BETWEEN FLORIDA DEPARTMENT OF HEALTH AND <<PARTY NAME>>

This Contract is between the FLORIDA DEPARTMENT OF HEALTH (Department), an agency of the State of Florida, with offices at 2585 Merchants Row Blvd., Tallahassee, Florida 32311, and (Contractor), collectively the Parties.

SECTION 1. CONTRACT DOCUMENTS AND HIERARCHY

The Contract, including any exhibits referred to herein, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. The Contract consists of the documents listed below:

1. This final Contract document
2. Exhibit A – Scope of Work
3. Exhibit B – Price Reply
4. Exhibit C – Service Level Agreements (TBD)

SECTION 2. TERM

2.1 Initial Term

The initial term of the Contract is five years beginning on the last date it is signed by all Parties.

2.2 Renewal Term

The Department may renew this Contract for periods not to exceed 5 renewal years. Renewal may be for yearly or multiple-year increments. Any such renewal is at the Department's sole discretion, will be contingent upon satisfactory performance evaluations as determined by the Department, and will be subject to the availability of funds. Any renewal will consider the vendor's ability to (i) establish pricing guarantees throughout the contract term, (ii) ensure competitive pricing and services throughout the contract term, and (iii) ensure appropriate pricing improvements when warranted by market conditions and/or program modifications.

SECTION 3. PAYMENTS

3.1 Pricing

The Contractor shall adhere to the prices as stated in Exhibit B to this Contract.

Contractor's yearly price shall be divided into equal monthly payments.

3.2 Service Level Agreements

A Service Level Agreement (SLA) violation as described in Exhibit ___ shall be considered a breach of the Contract. The resulting damages to the Department from such a breach are by their nature impossible to ascertain presently and will be difficult to ascertain in the future. The issues involved in determining such damages will be numerous, complex, and unreasonably burdensome to prove. The parties acknowledge that these financial consequences are liquidated damages for damage to the Department from that specific breach, exclusive of any right to other legal or equitable remedies, not intended to be a penalty and solely intended to compensate for unknown and unascertainable damages. The Contractor therefore agrees to credit the Department consistently with Exhibit ___.

3.3 Price Adjustments

Prior to opting for any renewal period, the Department reserves the right to further negotiate reduction in pricing for the renewal years. The Contractor agrees to engage in good faith negotiations for the renewal years pricing, if requested by the Department.

3.4 Detailed Invoices

The Contractor shall submit monthly, detailed invoices for fees or other compensation for services or expenses in detail sufficient enough for a proper pre-audit and post-audit. The Department reserves the right to request additional documentation as needed.

3.5 Appropriations

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

SECTION 4. CONTRACT ADMINISTRATION

4.1 Department Contract Administrator

The Contract Administrator whose responsibilities will be to maintain this Contract is as follows:

Departmental Purchasing
Florida Department of Health
2585 Merchants Row Blvd. Tallahassee, Florida 32311
Telephone:
Email:

In the event that the Department changes the Contract Administrator, the Department will notify the Contractor in writing via email. Such changes do not require a formal written

amendment to the Contract.

4.2 Contract Manager

The Contract Manager who is primarily responsible for overseeing the Contractor's daily performance of its duties and obligations pursuant to the terms of this Contract is:

TBA

<Insert vendor name>

<Insert vendor physical address> Telephone: (850) XXX-XXXX Email:

In the event that the Department changes the Contract Manager, the Department will notify the Contractor in writing via email. Such changes do not require a formal written amendment to the Contract.

4.3 Contractor Representative

The Contractor's employee who is responsible for overseeing the Contractor's daily performance of its duties and obligations pursuant to the terms of this Contract is:

Jane Doe

<Insert vendor name>

<Insert vendor physical address> Telephone: (850) XXX-XXXX Email:

jane.doe@xxxxxx.com

In the event that the Contractor changes the Contractor Representative, the Contractor will notify the Department in writing via email. Such changes do not require a formal written amendment to the Contract.

SECTION 5. COMPLIANCE WITH LAWS

5.1 Compliance

The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. The Contractor shall comply with section 274A of the Immigration and Nationality Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status or veteran's status. Violation of any laws, rules, codes, ordinances or licensing requirements shall be grounds for Contract termination or non-renewal of the Contract.

5.2 Notice of Legal Actions

The Contractor shall 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 shall 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 shall be grounds for termination or nonrenewal of the Contract.

5.3 Convicted and Discriminatory Vendors

Pursuant to sections 287.133 and 287.134, Florida Statutes, the following restrictions are placed on the ability of persons placed on the convicted vendor list or the discriminatory vendor list.

5.3.1. Convicted Vendors

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not 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 consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for Category Two for a period of 36 months following the date of being placed on the convicted vendor list.

5.3.2. Discriminatory Vendors

An entity or affiliate who has been placed on the discriminatory vendor list may not 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 consultant under a contract with any public entity; and may not transact business with any public entity.

The Contractor shall 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 life of the Contract.

5.3.3. Cooperation with the Inspector General

Pursuant to section 20.055(5), Florida Statutes, Contractor and any subcontractors understand and will comply with their duty to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

SECTION 6. DEPARTMENT OF STATE, CORPORATE STATUS CERTIFICATE

Contractor and any subcontractors that assert corporate status must provide the Department conclusive evidence, per section 607.0127, Florida Statutes, of a certificate of status if a Florida corporation, or of a certificate of authorization if a foreign corporation obtained from the Florida Department of State per section 607.0128, Florida Statutes, not subject to any

qualification stated in the certificate, and maintain such status through the life of the Contract.

SECTION 7. LIABILITY AND WORKER'S COMPENSATION INSURANCE

During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract, which, at a minimum, shall be as follows: workers' compensation and employer's liability insurance per Florida statutory limits (currently \$200,000 per accident, \$200,000 per person and \$500,000 policy aggregate) covering all employees engaged in any Contract work; commercial general liability coverage on an occurrence basis in the minimum amount of \$1,000,000 (defense cost shall be in excess of the limit of liability), naming the State as an additional insured; and automobile liability insurance covering all vehicles, owned or otherwise, used in the Contract work, with minimum combined limits of \$500,000, including hired and non-owned liability and \$5,000 medical payment. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of the Contract. The Contract shall not limit the types of insurance Contractor may desire to obtain or be required to obtain by law. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized to write policies in the State of Florida. The Contractor shall have their insurance carrier note the Department as an additional insured.

SECTION 8. PUBLIC RECORDS

8.1 Access to 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), Florida Statutes.

8.2 Redacted Copies of Confidential Information

If the Contractor considers any portion of any documents, data, or records submitted to the Department to be confidential, proprietary, trade secret or otherwise not subject to disclosure pursuant to Chapter 119, Florida Statutes, the Florida Constitution or other authority, the Contractor must simultaneously provide the Department with a separate redacted copy of the information it claims as confidential and briefly describe in writing the grounds for claiming exemption from the public records law, including the specific statutory citation for such exemption. This redacted copy shall contain the Contract title and number, and shall be clearly titled "Confidential." The redacted copy should only redact those portions of material that the Contractor claims is confidential, proprietary, trade secret or otherwise not subject to disclosure.

8.3 Request for Redacted Information

In the event of a public records or other disclosure request pursuant to Chapter 119, Florida

Statutes, the Florida Constitution or other authority, to which documents that are marked as “Confidential” are responsive, the Department will provide the Contractor-redacted copies to the requestor. If a requestor asserts a right to the Confidential Information, the Department will notify the Contractor such an assertion has been made. It is the Contractor’s responsibility to assert that the information in question is exempt from disclosure under Chapter 119 or other applicable law. If the Department becomes subject to a demand for discovery or disclosure of the Confidential Information of the Contractor under legal process, the Department shall give the Contractor prompt notice of the demand prior to releasing the information labeled “Confidential” (unless otherwise prohibited by applicable law). The Contractor shall be responsible for defending its determination that the redacted portions of its response are confidential, proprietary, trade secret, or otherwise not subject to disclosure.

8.4 Indemnification

The Contractor shall protect, defend, and indemnify the Department for any and all claims arising from or relating to the Contractor’s assertion that the redacted portions of any materials submitted to the Department relating in any way to this Contract are confidential, proprietary, trade secret, or otherwise not subject to disclosure. If the Contractor fails to submit a redacted copy of information it claims is Confidential, the Department is authorized to produce the entire documents, data, or records submitted to the Department in answer to a public records request or other lawful request for these records. The Department may use counsel of its choosing to defend any such claims, and the Contractor shall promptly pay the Department’s invoices for legal services on a monthly basis for all costs and expenses, including legal fees, incurred in defending such claims.

8.5 Contractor as Agent

Solely for the purposes of this section, the contract manager is the agency custodian of public records. If, under this Contract, 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:

8.5.1 Keep and maintain public records required by the public agency to perform the service.

8.5.2 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.

8.5.3 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.

8.5.4 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.

8.5.5 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 FOR THE CONTRACT MANAGER.

SECTION 9. E-VERIFY

Pursuant to section 448.095, Florida Statutes, the Contractor is required to register with and use the E-Verify system operated by the U.S. Department of Homeland Security (DHS) to verify the work authorization status of all new employees hired by the Contractor during the Contract term. Also, the Contractor shall include in related subcontracts a requirement that subcontractors performing work or providing services pursuant to this Contract 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 such affidavit for the duration of the Contract term. Notwithstanding any other provision in the Contract, the Contractor shall provide the Department full access to the Contractor's books and records to allow the Department to audit and confirm compliance with section 448.095, Florida Statutes.

In order to implement this provision, the Contractor shall provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five days of Contract execution.

Upon each Contractor or subcontractor new hire, the Contractor shall provide a statement within five days to the Contract Manager identifying the new hire with its E-Verify case number.

SECTION 10. SCRUTINIZED COMPANY LIST

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 and

215.4725, Fla. Stat., respectively. Pursuant to sections 287.135(5) and 287.135(3), Fla. Stat., 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.

SECTION 11. GEOGRAPHIC LOCATION OF DATA AND SERVICES

All data generated, used, or stored by the Contractor pursuant to the Contract must reside and remain in the United States and must not be transferred outside of the United States. Such data must not be accessed by any persons outside the United States. All services provided under the Contract, including any call center or other help services, must be performed by persons located in the United States.

SECTION 12. RECORDS RETENTION

The Contractor shall 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 shall retain all documents related to this Contract in compliance with the rules or guidelines of the Florida Department of State for record retention by state agencies.

SECTION 13. GIFTS

The Contractor will not offer to give or give any gift to any State of Florida employee. The Contractor will ensure that its subcontractors, if any, will comply with this provision.

SECTION 14. VENDOR OMBUDSMAN

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

SECTION 15. MONITORING BY THE DEPARTMENT

The Contractor shall permit all persons who are duly authorized by the Department to inspect and copy any records, papers, documents, facilities, goods and services of the Contractor that are relevant to this Contract and to interview clients, employees and subcontractor employees of the Contractor to assure the Department of satisfactory performance of the terms and conditions of this Contract. Following such review, the Department may deliver to the Contractor a written report of its finding(s) and direct the Contractor to develop a corrective action plan. This provision does not limit the Department's other rights in this Contract.

SECTION 16. AUDITS

The Department may conduct or have conducted performance and/or compliance audits of any and all areas 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 contracted services. 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 this Contract, may be inspected by the Department upon 15 days' notice, during normal working hours and in accordance with the Contractor's facility access procedures where facility access is required. Release statements from its subcontractors, partners or agents are not required for the Department or its designee to conduct compliance and performance audits on any of the Contractor's contracts relating to this Contract. The State's Chief Financial Officer and the Office of the Auditor General also have authority to perform audits and inspections.

SECTION 17. BACKGROUND SCREENING, RECORD RETENTION, AND WARRANTY OF SECURITY

All Contractor employees, subcontractors, and agents performing work under the Contract must comply with all security and administrative requirements of the Department.

17.1 Background Screening

In addition to any background screening required by the Contractor as a condition of employment, the Contractor warrants that it will conduct a criminal background screening of, or ensure that such a screening is conducted for, each of its employees, subcontractor personnel, independent contractors, leased employees, volunteers, licensees or other person, hereinafter referred to as "Person" or "Persons," operating under their direction who directly perform services under the Contract, whether or not the Person has access to Data, as well as those who have access, including indirect access, to Data, whether or not they perform services under the Contract. The Contractor warrants that all Persons will have passed the Background Screening described herein before they have Access to Data or begin performing services under the contract. The look-back period for such background screenings shall be for a minimum of six years where six years of historical information is available.

"Access" means to review, inspect, approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any data, regardless of type, form, or nature of storage. Access to a computer system or network includes local and remote access.

"Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions, that it is exempt or confidential under Florida or federal law, or protected health information as defined in 45 C.F.R. § 160.103. Data may be in any form, including but not limited to,

storage media, computer memory, in transit, presented on a display device, or in physical media such as paper, film, microfilm, or microfiche. Data includes the original form of the Data and all metadata associated with the Data.

The minimum background check process will include a check of the following databases through a law enforcement agency or a Professional Background Screener accredited by the National Association of Professional Background Screeners or a comparable standard:

- Social Security Number Trace; and
- Criminal Records (Federal, State and County criminal felony and misdemeanor, national criminal database for all states which make such data available).

The Contractor agrees that each Person will be screened as a prior condition for performing services or having access to Data. The Contractor is responsible for any and all costs and expenses in obtaining and maintaining the criminal background screening information for each Person described above. The Contractor will maintain documentation of the screening in the Person's employment file. The Contractor will abide by all applicable laws, rules and regulations including, but not limited to the Fair Credit Reporting Act and/or any equal opportunity laws, rules, regulations or ordinances.

17.1.1 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 (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 Data or directly performing services under the Contract. The disqualifying offenses are:

- Computer related or information technology crimes
- Fraudulent practices, false pretenses and frauds, and credit card crimes
- Forgery and counterfeiting
- Violations involving checks and drafts
- Misuse of medical or personnel records
- Felony theft

If the Contractor finds a Disqualifying Offense for a Person within the last six (6) years from the date of the court's disposition, it may obtain information regarding the incident and determine whether that Person should continue providing services under the Contract or have access to Data. The Contractor will consider the

following factors only in making the determination: i.) nature and gravity of the offense, ii.) the amount of time that lapsed since the offense, iii.) the rehabilitation efforts of the person and iv.) relevancy of the offense to the job duties of the Person. If the Contractor determines that the Person should be allowed access to Data, then Contractor shall maintain all criminal background screening information and the rationale for such access in the Person's employment file.

17.1.2 Refresh Screening

The Contractor will ensure that all background screening will be refreshed every year from the time initially performed for each Person during the Term of the Contract.

7.1.3 Self-Disclosure

The Contractor shall ensure that all Persons have a responsibility to self-report within three calendar days to the Contractor any updated court disposition regarding any disqualifying offense, regardless of adjudication (adjudication withheld, a plea of guilty or nolo contendere, or a guilty verdict). The Contractor shall immediately reassess whether to disallow that Person access to any State of Florida premises or from directly performing services under the Contract. Additionally, the Contractor shall require that the Person complete an annual certification that they have not received any additional criminal misdemeanor or felony record regardless of adjudication (adjudication withheld, a plea of guilty or nolo contendere, or a guilty verdict) for the Disqualifying Offenses and shall maintain that certification in the employment file.

In addition, the Contractor shall ensure that all Persons have a responsibility to self-report to the Contractor within three calendar days, any arrest for any Disqualifying Offense. The Contractor shall notify the Contract Manager within 24 hours of all details concerning any reported arrest.

17.2 Duty to Provide Secure Data

The Contractor will maintain the security of Data including, but not limited to, a secure area around any display of such Data or Data that is otherwise visible. The Contractor will also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information. Data cannot be disclosed to any person or entity that is not directly approved to participate in the scope of work set forth in this Contract.

17.3 Department's Ability to Audit Screening Compliance and Inspect Locations

The Department reserves the right to audit the Contractor's background screening process upon two days prior written notice to the Contractor during the Term of the Contract. Department will have the right to inspect the Contractor's working area, computer systems, and/or location upon two business days prior written notice to the Contractor to ensure that access to the Data is secure and in compliance with the Contract and all applicable state and federal rules and regulations.

17.4 Record Retention

The Contractor shall retain a list of all Persons with Access to Data, including a statement confirming that each Person has passed the Background Screening required herein. Such a statement shall not include the substance of the screening results, only that the Person has passed the screening.

The Contractor shall create a written policy for the protection of Data, including a policy and procedure for Access to Data.

The Contractor shall document and record, with respect to each instance of Access to Data:

- 1) The identity of all individual(s) who accessed Data in any way, whether those individuals are authorized Persons or not;
- 2) The duration of the individual(s)' access to Data, including the time and date at which the access began and ended;
- 3) The identity, form, and extent of Data accessed, including, but not limited to, whether the individual accessed partial or redacted versions of Data, read-only versions of Data, or editable versions of Data; and
- 4) The nature of the access to Data, including whether Data was edited or shared with any other individual or entity during the duration of the access, and, if so, the identity of the individual or entity.

The Contractor shall retain the written policy and information required in this subsection for the duration of this Contract and a period of no less than five (5) years from the date of termination of this Contract and any Contract extensions. The written policy and information required in this subsection shall be included in the Department's audit and screening abilities as defined in subsection 19.3. The written policy and information required in this subsection shall also be subject to immediate disclosure upon written or oral demand at any time by the Department or its designated agents or auditors.

Failure to compile, retain, and disclose the written policy and information as required in this subsection shall be considered a breach of the Contract. The resulting damages to the Department from a breach of this subsection are by their nature impossible to ascertain presently and will be difficult to ascertain in the future. The issues involved in determining such damages will be numerous, complex, and unreasonably burdensome to prove. The parties acknowledge that these financial consequences are liquidated damages, exclusive of any right to other legal or equitable remedies, not intended to be a penalty and solely intended to compensate for unknown and unascertainable damages. The Contractor therefore agrees to credit the Department the sum of \$2,500.00 for each breach of this subsection.

17.5 Indemnification

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

two-year period of time following the breach. The Department may use counsel of its choosing to defend any such claims, and the Offeror shall promptly pay the Department's invoices for legal services on a monthly basis for all costs and expenses, including legal fees, incurred in defending such claims.

SECTION 18. PERFORMANCE BOND

Within 30 days of contract execution, Contractor will deliver to the Department's Contract Manager a Performance Bond with a penal sum of [to be determined]. The bond shall be used to guarantee satisfactory performance by the Contractor throughout the term of the contract. The Performance Bond shall be maintained throughout the term of the Contract, issued by an acceptable surety company which is licensed to do business in the State of Florida, as determined by the Department, and must name the Department as the obligee.

The Contractor and surety shall provide the Department prior written notice or immediate notice upon knowledge of any attempt to cancel or to make any other material change in the Performance Bond, or of the Contractor's failure to pay bond premiums. The Department shall not be responsible for any premiums or assessments on or in relation to the Performance Bond.

The Performance Bond is to protect the Department from the failure of the Contractor's performance in accordance with the Contract. No payments shall be made to the Contractor until the Performance Bond is in place and approved by the Department in writing. Within 30 days of contract execution, and by contract execution anniversary each year following, the Contractor shall provide the Department with a surety bond continuation certificate or other acceptable verification that the Performance Bond is valid and has been renewed for an additional year.

SECTION 19. NO OFFSHORING AFFIDAVIT

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 Data to be sent by any medium, transmitted or accessed outside of the United States.

The Contractor agrees that a violation of items listed above will result in immediate and irreparable harm to the Department and will entitle the Department to a credit of \$50,000 per violation, with a total cap of \$500,000 per event. This credit is intended only to cover the Department's internal staffing and administrative costs as well as the diminished value of Services provided under the Contract and will not preclude the Department from recovering other damages it may suffer as a result of such violation. For purposes of determining the damages due hereunder, a group of violations relating to a common set of operative facts (e.g., same location, same time period, same off-shore entity) will be treated as a single event. A violation of this provision will also entitle the Department to recover damages, if any, arising from a breach of this section and constitutes an event of default.

Notwithstanding any provision of this Contract to the contrary, the Contractor shall notify the Department as soon as possible and in all events within one (1) business day in the event it 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 employee/retiree or the entire population. The notification shall be clear and conspicuous and include a description of the following:

- (a) The incident in general terms.
- (b) The type of personal information that was subject to the unauthorized access and acquisition.
- (c) The number of individuals who were, or potentially have been affected by the breach.
- (d) The actions taken by the Contractor to protect the Data information 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.

Upon becoming aware of an alleged security breach or security incident, the Contractor Security Officer shall set up a conference call with the Department's Contract Manager. The conference call invitation shall contain a brief description of the nature of the event. When possible, a thirty (30) minutes notice shall 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 shall be scheduled.

All available information shall be shared on the call. The Contractor shall answer all questions based on the information known at that time and shall answer additional questions as additional information becomes known. The Contractor shall 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 shall notify the Department's Contract Manager within one (1) business day.

SECTION 21. TRANSACTION FEE

The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System ("System"). Pursuant to section 287.057(22), Florida Statutes, all payments shall be assessed Transaction Fee which the Contractor shall pay to the State, unless exempt pursuant to rule 60A-1.032, F.A.C.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to rule 60A- 1.031(2), F.A.C. By submission of these reports and corresponding payments, Contractor certifies their correctness. All such reports and payments shall be subject to audit

by the State or its designee.

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

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering re-procurement costs from the Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE SUBJECT TO BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR LIST AS PROVIDED IN RULE 60A-1.006, F.A.C.**

SECTION 22. INVOICING AND PAYMENT

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

Payment shall be made in accordance with sections 215.422 and 287.0585, Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. Contractors may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State Agencies. The Department's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve the Contractor of its obligations to the Department.

SECTION 23. TAXES

The State does not pay Federal excise or sales taxes on purchases of products. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. Any exceptions to this paragraph shall be explicitly noted by the Department in the Contract.

SECTION 24. GOVERNMENTAL RESTRICTIONS

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

SECTION 25. LOBBYING AND INTEGRITY

The Department shall ensure compliance with sections 11.062, 216.347, Florida Statutes. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Department Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dhis.dos.state.fl.us/barm/genschedules/gensched.htm>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

SECTION 26. INDEMNIFICATION

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

Further, the Contractor shall fully indemnify, defend, and hold harmless the Department from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to the Department's misuse or modification of the Contractor's products or the Department's operation or use of Contractor's products in a manner not contemplated by the Contract. If any product is the subject of an infringement suit or in the Contractor's opinion is

likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Department the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure for the Department the right to continue using the product, the Contractor shall remove the product and refund to the Department the amounts paid in excess of a reasonable rental for past use. The Department shall not be liable for any royalties.

The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the Department giving the Contractor: (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense; and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the Department in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.

SECTION 27. SUSPENSION OF WORK

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

SECTION 28. TERMINATION FOR CONVENIENCE

The Department, by 30 days written notice to the Contractor, may terminate the Contract in whole or in part when the Department determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product or service after the effective date of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.

SECTION 29. TERMINATION FOR CAUSE

The Department may terminate the Contract if the Contractor defaults or breaches this Contractor or fails to abide by any statutory, regulatory, or licensing requirement. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the termination shall be automatically deemed a termination for convenience as if the termination had been issued for the convenience of the Department. The rights and remedies of the Department in this clause are in addition to any other rights and remedies provided by law or under the Contract.

SECTION 30. FORCE MAJEURE, NOTICE OF DELAY, AND NO DAMAGES FOR DELAY

The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Department in writing of the delay or potential delay and describe the cause of the delay either: (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. No claim other than for an extension of time shall be asserted against the Department. The Contractor shall not be entitled to an increase in the Contract price, damages, 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 shall perform at no increased cost. **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy.

SECTION 31. CHANGES

The Department may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Department may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If these changes cannot be fulfilled by the Contractor, the Department may solicit separate bids to satisfy them.

SECTION 32. ADVERTISING

Subject to chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Department without prior written approval from the Department, including, but not limited to mentioning the Department in a press release or other promotional material, identifying the Department as a reference, or otherwise linking the Contractor's name to the Department in any material published, either in print or electronically.

SECTION 33. ASSIGNMENT

The Contractor shall 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, unless the Department expressly waives such secondary liability. The Department may assign the Contract with prior written notice to Contractor of its intent to do so.

SECTION 34. ANTITRUST ASSIGNMENT

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

SECTION 35. DISPUTE RESOLUTION

Any dispute concerning performance of the Contract shall be decided by the Department's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the parties expressly waive any right to jury trial.

SECTION 36. EMPLOYEES, SUBCONTRACTORS, AND AGENTS

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

SECTION 37. SECURITY AND CONFIDENTIALITY

The Contractor shall comply fully with all security procedures of the United States, State of Florida, and the Department in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the

Department. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the Department's confidential information, or material that is otherwise obtainable under state law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

SECTION 38. WARRANTY OF AUTHORITY

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

SECTION 39. WARRANTY OF ABILITY TO PERFORM

The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133, Florida Statutes, 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.

SECTION 40. NOTICES

All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery to the agency designee identified in the original solicitation, or as otherwise identified by the Department. Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.

SECTION 41. PRISON REHABILITATIVE INDUSTRIES AND DIVERSIFIED ENTERPRISES, INC. (PRIDE)

Section 946.515(6), Florida Statutes requires the following statement to be included in the contract: " 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 products it offers is available at <http://www.pridefl.com>.

SECTION 42. PRODUCTS AVAILABLE FROM THE BLIND OR OTHER HANDICAPPED

Section 413.036(3), Florida Statutes requires the following statement to be included in the contract: "IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES THAT ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM A NONPROFIT AGENCY FOR THE BLIND OR FOR THE SEVERELY HANDICAPPED THAT IS QUALIFIED PURSUANT TO CHAPTER 413, FLORIDA STATUTES, IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 413.036(1) AND (2), FLORIDA STATUTES; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THE STATE AGENCY INsofar AS DEALINGS WITH SUCH QUALIFIED NONPROFIT AGENCY ARE CONCERNED."

Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.

SECTION 43. MODIFICATION OF TERMS

The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Department and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Department and the Contractor. No oral agreements or representations shall be valid or binding upon the Department or the Contractor. No alteration or modification of the Contract terms, including substitution of services or product, shall be valid or binding against the Department. The Contractor may not unilaterally modify the terms of the Contract any way. The Department's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

SECTION 44. WAIVER

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

SECTION 45. EXECUTION IN COUNTERPARTS

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

SECTION 46. SEVERABILITY

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

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