



**FLORIDA
DEPARTMENT OF LAW ENFORCEMENT
INVITATION TO BID**

Acknowledgment Form

Page 1 of 48 pages

SUBMIT REPLY TO:

Florida Department of Law Enforcement
Office of General Services
2331 Phillips Road
Tallahassee, Florida 32308
Telephone Number: (850) 410-7300

Agency Release Date:
Tuesday, November 5, 2024

Solicitation Number:
FDLE ITB 2522

Solicitation Title: Ephesoft Technical / Maintenance Support Services

Bids are Due:
Wednesday, November 20, 2024

Bid responses shall be binding until execution of a Contract with the successful Bidder.

****Bidder Name:**

****If a fictitious name is used, include the registered name (i.e. XYZ, Inc. DBA ABC)**

Bidder Mailing Address:

***Authorized Signature (Manual)**

City, State, Zip:

Phone Number:

***Authorized Signature (Type), Title**

Toll-Free Number:

Fax Number:

Email Address:

***This individual must have the authority to legally bind the Bidder to a contractual obligation. By submission of a signature on the response, the Bidder certifies that they comply with all terms and conditions contained herein.**

FEID Number:

Type of Business Entity (Corporation, LLC, partnership, etc.):

BIDDER CONTACTS: Provide the name, title, address, telephone number, and email address of the official contact and an alternate, if available. These individuals shall be available to be contacted by telephone or attend meetings as may be appropriate regarding the solicitation schedule.

PRIMARY CONTACT:

SECONDARY CONTACT:

Contact Name, Title:

Contact Name, Title:

Address:

Address:

Phone Number:

Phone Number:

Fax Number:

Fax Number:

Email Address:

Email Address:

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SECTION 1 – INTRODUCTORY SECTION

The State of Florida, Department of Law Enforcement, hereinafter called the FDLE, Department, Agency, State, Customer or Purchaser, issues this invitation to receive competitive sealed bids for Ephesoft Technical / Maintenance Support Services. This Invitation to Bid (ITB) and all activities leading toward the anticipated issuance of a Contract pursuant to this ITB, are conducted pursuant to Chapters 943 and 287 Florida Statutes, and Rule 60A-1 Florida Administrative Code.

1.1. AGENCY INTENT

It is the intent of the FDLE to obtain competitive sealed bids from qualified vendors to enter into a Contract Fixed Rate Agreement for Ephesoft Technical / Maintenance Support Services. FDLE intends to make a single award from this ITB and establish a Contract Fixed Rate Agreement with the intent to issue a two-party contract against the Agreement. The Contract Fixed Rate Agreement will have a term of three (3) years, with an option for three (3), one (1) year renewals.

1.2. HEADING AND SECTION REFERENCES

Section headings in this ITB are inserted for convenience only and are not to be construed as a limitation of the scope of the particular section to which the heading refers.

1.3. GENERAL INSTRUCTIONS TO RESPONDENTS (PUR 1001)

Pursuant to Rule 60A-1.002 F.A.C, the State of Florida General Instructions to Respondents (PUR 1001) are hereby referenced and incorporated in their entirety to this ITB. Bidders are instructed to read this document in its entirety. There is no need to return this document to the Department. The Department instructions to respondents contained within this ITB supersede any conflicting instructions contained in the PUR1001.

[State Purchasing \(PUR\) Forms / State Agency Resources / State Purchasing / Business Operations - Florida Department of Management Services \(myflorida.com\)](#)

1.4. MANDATORY REQUIREMENTS

The Department has established certain requirements with respect to bids to be submitted by respondents. The use of “shall”, “must” or “will” (except to indicate simple futurity) in this ITB indicates a requirement or conditions from which a material deviation may not be waived by the Department. A deviation is material if, in the Department’s sole discretion, the deficient response is not substantially in accordance with the ITB requirements, provides an advantage to one respondent over other respondents, has potentially significant effect on the quantity or quality of items bid, or on the cost of the Department. Material deviations cannot be waived. The words “should” or “may” in this ITB indicate desirable attributes or conditions but are permissive in nature. Deviation from, or omission of, such a desirable feature, will not in itself cause rejection of a Bid.

1.5. PROCUREMENT OFFICER

The Procurement Officer, acting on behalf of the Department, is the sole point of contact outside of official public meetings, with regard to all procurement matters relating to this solicitation, from the date of the release of the solicitation until the Department Notice of Intent to Award is posted on the Vendor Information Portal (VIP).

All questions or requests for clarification are to be directed to:

Angela Githens
Florida Department of Law Enforcement
Office of General Services
Telephone: (850) 410-7300
Email: fdleogscontracts@fdle.state.fl.us

NOTE: ALL EMAILS TO THE PROCUREMENT OFFICER MUST CONTAIN THE SOLICITATION NUMBER IN THE SUBJECT LINE OF THE EMAIL

1.6. RESTRICTIONS ON COMMUNICATIONS

Florida Statute (F.S.) Section 287.057(25) imposes specific communication restrictions related to this solicitation. Respondents to this solicitation, or persons acting on their behalf, are prohibited from contacting any employee or officer of the executive or legislative branch concerning any aspect of this solicitation. This prohibition applies from the release of the solicitation until the end of the 72-hour period following the agency posting the notice of intended award. This period excludes Saturdays, Sundays, and state holidays. Any communication must be in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

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1.7. SCHEDULE OF EVENTS / TIMELINE

The following schedule will be strictly adhered to in all actions relative to this ITB unless modified by the Department by written addenda. The Department will publish all written addenda on the MyFloridaMarketPlace Vendor Information Portal (VIP). No liability to the Department will result from such deviations. All required Bidder actions must be completed by the date and time indicated on the schedule. All listed times are Eastern Time (ET) in Tallahassee, Florida.

DATE	TIME	ACTIVITY	LOCATION
11/05/2024	3:30 PM	FDLE Posts Invitation to Bid Advertisement	Vendor Information Portal https://vendor.myfloridamarketplace.com/
11/12/2024	Must be received PRIOR TO 5:00 PM	Submission Deadline for Vendor Written Questions to Procurement Officer	FDLE Office of General Services fdleogscontracts@fdle.state.fl.us
11/18/2024	--	FDLE Posts Electronic Written Answers to Vendor Questions (Anticipated Date)	Vendor Information Portal https://vendor.myfloridamarketplace.com/
11/20/2024	Must be received PRIOR TO 3:30 PM	Vendor Bids Due to FDLE	Submit To: FDLE Off-Site Mail Facility c/o Florida Department of Law Enforcement Headquarters, Office of General Services Attention: Angela Githens 813B Lake Bradford Road Tallahassee, FL 32304 fdleogscontracts@fdl.state.fl.us
11/20/2024	4:00 PM	Public Meeting / Opening of Bids	Via Conference Call Conference Call Number: (571) 317-3112 Participation Code: 984-705-797

The Department shall utilize the State of Florida MyFloridaMarketPlace Vendor Information Portal and the Florida Administrator Register for all Invitation to Bid Public Notice information, in accordance with Florida Statute Chapter 120.525 and Florida Administrative Code 28-102.001, respectively.

1.8. ACCESSIBILITY FOR DISABLED PERSONS

Any person with a qualified disability shall not be denied equal access and effective communication regarding any ITB documents or attendance at any related meeting or ITB opening. If accommodations are needed because of a disability, please contact the Procurement Officer or FDLE Office of General Services at (850) 410-7300.

1.9. BIDDER QUESTIONS

Questions relevant to this ITB are invited and should be submitted in written form (e-mailed) utilizing the Question Submittal Form (Attachment A) to the Procurement Officer. Questions must be received by the FDLE Procurement Officer on or before the date and time identified in the Schedule of Events (Section 1.7). The Department recommends that Bidders confirm receipt of questions submitted.

Responses to all questions will be posted on the VIP in accordance with the Schedule of Events. The written response posted on the VIP is the ONLY official response. Oral responses that differ from the written responses must be considered invalid. It is the responsibility of the Bidder to monitor the VIP as no additional notification will be provided when responses to questions are posted.

SECTION 2 –SCOPE OF WORK

2.1. EPHESOFT TECHNICAL / MAINTENANCE SUPPORT SERVICES

Vendors are to bid a fixed discount rate (see Attachment B) to be applied against any and all Ephesoft Technical Support Services and/or Maintenance Support Services to include telephone technical support, Ephesoft platinum support for systems and any other support services available from Ephesoft for software license. No 'like' or 'similar' products will be accepted.

The Technical Support Services and/or Maintenance Support Services must be compliant with Ephesoft Terms and Conditions. The software maintenance and support shall be 24 hours/7 days per week in accordance with the Ephesoft Support Services Addendum.

All Ephesoft Technical Support Services and/or Maintenance Support Services will be invoiced and paid quarterly in arrears.

2.2. BACKGROUND

Current Environment

The Agency has acquired various Ephesoft Enterprise Platinum Perpetual licenses over time to support its mission. Ephesoft Perpetual Licenses currently in use are:

- A. Production environment: Quantity 2 Ephesoft Enterprise Platinum Perpetual licenses: 4 core Part number LIC-EP-4
- B. Test environment: Quantity 2 Ephesoft Enterprise Platinum Perpetual licenses: 4 core Part number LIC-TEST-EP
- C. Development environment: Quantity 1 Ephesoft Platinum Perpetual license: 4 core Part number LIC-TEST-EP

2.3. GENERAL ASSUMPTIONS

The Vendor agrees that the services to be performed and associated costs are based on the following assumptions:

- A. Ephesoft acknowledges that FDLE's hardware environment is clustered and consists of 8 cores in Dev, 16 cores in Test, and 16 cores in Production.
- B. Ephesoft acknowledges that FDLE has the right to utilize 4 cores in Dev, 12 cores in Test, and 12 cores in Production.
- C. Ephesoft acknowledges that FDLE will not be required to purchase additional cores of licensing unless FDLE begins to process at the levels of 12 cores.
- D. Ephesoft and FDLE acknowledge that FDLE will only pay maintenance on 4 cores in Development, 8 cores in Test, and 8 cores in Production until FDLE provides further notice to Ephesoft.
- E. FDLE acknowledges that if FDLE reaches the processing level of 12 cores in Test and 12 cores in Production, FDLE will revisit maintenance costs at the next Contract renewal.

2.4. OPTIONAL PRODUCTS AND SERVICES

Vendors may, but are not required to, bid a fixed discount rate (see Attachment B) to be applied against the following subsections:

- A. Ephesoft Professional Services – Block of hours up to 40 each year of Professional services. All services will be rendered on a time and materials basis and invoiced separately. Time and materials shall be billed by actuals. All Services performed under this SOW will be conducted remotely. Weekly Status Reports will be provided identifying completed tasks and work output for the previous week. Weekly Status Reports will require review and sign off as proof of delivery. FDLE will be invoiced against these reports.

SECTION 3 – INVITATION TO BID PROCESS

This ITB is hereby advertised on the State of Florida VIP. To find the ITB or other related information, enter Agency "Department of Law Enforcement" and click on "Initiate Search" at the bottom of the web page. If unable to download the document(s), contact the FDLE Procurement Officer.

Section 120.57(3)(b), F.S., requires that notice of protest of the solicitation documents shall be made within 72 hours after the posting of the solicitation. Failure to file a protest within the time prescribed in section 120.57(3), F.S., shall constitute a waiver of proceedings under Chapter 120, F.S.

3.1 SPECIAL CONDITIONS AND INSTRUCTIONS

The FDLE Bid requirements and special conditions modify and shall take precedence over the State of Florida form PUR1001, General Instructions to Bidders.

The Department currently does not utilize the State of Florida's, MyFloridaMarketPlace e-Procurement system for competitive solicitations such as this ITB. Bidders are to manually submit a hard copy of their responses to this ITB as identified in this section. Specific references to MFMP usage for this ITB stated in paragraphs 3 and 5 of the PUR1001, General Instructions to Bidders are not applicable.

3.2 BIDDER INQUIRIES

The Bidder will examine the ITB to determine if the Department requirements are clearly stated. If there are requirements that may restrict competition, Bidders may request specification changes. Requests must identify and describe the difficulty meeting specifications, provide detailed justification, and provide the recommended changes. Change requests or protests of the specifications must be received by the State no later than 72 hours after the posting of the solicitation. The Department will determine what, if any, changes to the ITB will be accepted. If required, the Department will issue addenda reflecting the changes.

Written interpretations of the appropriate representative of the Department will prevail. While oral responses may be given in good faith and are intended to be accurate, the Department is not bound by any non-written interpretation or guidance offered to Bidders.

3.3 ADDENDA

The Department reserves the right to modify this ITB. All addenda to this ITB will be in writing with content and number of pages described to all Bidders. Any addenda or answers to written questions supplied by the Department to participating Bidders may include an Addenda Acknowledgement Form. This form shall be signed by an authorized representative of the Bidder's organization and submitted to the Department.

All addenda will be provided via the VIP at the following website:

<https://vendor.myfloridamarketplace.com/>

It is the sole responsibility of the Bidder to monitor the VIP for any addenda issued in reference to this ITB.

3.4 DISCUSSIONS

No negotiations, decisions or actions shall be initiated or executed by the Bidder as a result of any discussions with any State employee prior to the opening of the sealed Bid(s). Prior to the opening of the sealed Bid(s), Bidders are NOT to divulge bid prices to any state employee or representative of the State. Further, Bids submitted to the Department will remain unopened until the time for opening Bids as indicated on the Schedule of Events / Timeline. During this period, any discussion by the Bidder with any state employee or representative of the State involving price information will result in rejection of said Bidder's response. Only those communications which are in writing or electronically submitted from the Department, Office of General Services may be considered as a duly authorized expression on behalf of the Department. Also, only communications from Bidders, which are in writing and signed or electronically submitted, will be recognized by the Department as duly authorized expressions on behalf of the Bidder.

3.5 MYFLORIDAMARKETPLACE (MFMP) REGISTRATION

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to section 287.057(24), Florida Statutes (F.S.). All payments issued by Agencies to registered vendors for purchases of Commodities or Contractual Services under Chapter 287, F.S., shall be assessed the Transaction Fee of one percent (1.0%) of the total amount of the payments received from the State or Eligible Users, as prescribed by Rule 60A-1.031, Florida Administrative Code (F.A.C.), or as may otherwise be established by law. Vendors shall pay the Transaction Fee and are subject to automatic deduction of the Transaction Fee, when automatic deduction becomes available. Vendors shall submit any monthly reports required pursuant to Rule 60A-1.031, F.A.C. All such reports and payments are subject to audit. The Department will have grounds for declaring the vendor in default if the vendor fails to comply with the payment of the Transaction Fee or reporting of payments, which may subject the vendor to being suspended from business with the State of Florida.

Information about the registration process is available and registration may be completed at the MFMP website: [Vendor Information Portal](#). Interested persons lacking internet access may request assistance from the MFMP Customer Service at (866) 352-3776.

Responding Bidders should be registered in the MFMP system at the time of Bid submission.

Bidders should register for the following United Nations Standard Products and Services (UNSPSC) Class/Group Commodity Code(s) pertaining to this Procurement:

- 81112200 Software Maintenance and Support

3.6 FLORIDA DEPARTMENT OF FINANCIAL SERVICES SUBSTITUTE W-9 INITIATIVE

The Florida Department of Financial Services (DFS) must have the correct Taxpayer Identification Number (TIN) and other related information (i.e., Social Security number) to report accurate tax information to the Internal Revenue service and determine if a vendor should receive a Form 1099. A completed Substitute form W-9 is required for any entity to receive payment from the State of Florida. Bidders must submit their W-9 forms electronically at the DFS website: <https://flvendor.myfloridacfo.com/>

The awarded Bidder must have a valid W-9 on file with the DFS prior to issuance of a Contract. This may be completed by the Bidder post-award and is not something which Department will consider in determining the responsiveness of a bid.

3.7 BID SUBMISSION FORMAT

The instructions for this solicitation have been designed to help ensure that all Replies are reviewed and evaluated in a consistent manner, as well as to minimize costs and response time. Any and all information submitted in variance with these instructions is subject to not being reviewed or evaluated.

Bids must be submitted in a sealed envelope/container. Bids must be submitted by U.S. Mail, United Parcel Service (UPS), Federal Express (FedEx), private courier, or hand delivery. Electronic submission or

facsimile transmission of a Bid is **NOT** authorized and will **NOT** be accepted. Bidders are cautioned that shipped Bids will be routed to the Department's Mail Processing Center in an off-site facility which may cause delays in delivery and receipt by the Office of General Services. Bidders choosing to mail Bids must take this into consideration and allow sufficient time to ensure timely delivery and receipt.

BIDDERS SHOULD INCLUDE THE FOLLOWING LABEL ON THE OUTSIDE OF ALL SEALED PACKAGES:

RESPONDING BIDDER NAME

SOLICITATION NUMBER: FDLE ITB 2522

TITLE: EPHESOFT TECHNICAL / MAINTENANCE SUPPORT SERVICES

BID OPENING: (INSERT DATE / TIME)

The Department mailing address is:

**ATTENTION: OFF-SITE MAIL FACILITY, C/O FLORIDA DEPARTMENT OF LAW ENFORCEMENT
OFFICE OF GENERAL SERVICES
ATTN: ANGELA GITHENS
813B LAKE BRADFORD ROAD
TALLAHASSEE, FLORIDA 32304**

A Bidder choosing to hand deliver a sealed Bid must take into consideration that the FDLE Headquarters Building is a secure facility. "Hand deliver" means delivery at the correct location on or before the required date and time. The FDLE Headquarters location is:

**FLORIDA DEPARTMENT OF LAW ENFORCEMENT
OFFICE OF GENERAL SERVICES
ATTN: ANGELA GITHENS
2331 PHILLIPS ROAD
TALLAHASSEE, FLORIDA 32308**

BIDS RECEIVED AFTER THE EXACT TIME/DATE SPECIFIED IN SECTION 1.7 WILL NOT BE CONSIDERED.

FAILURE TO INCLUDE ANY INFORMATION OR DOCUMENTATION REQUESTED WITHIN THIS ITB AT THE TIME OF SUBMISSION, OR AT THE TIME PRESCRIBED BY THE DEPARTMENT, WILL LEAD TO REJECTION OF THE BID FOR NON-RESPONSIVENESS. IF BIDDERS ARE UNSURE OF THE REQUIRED INFORMATION OR DOCUMENTATION, CONTACT THE PROCUREMENT OFFICER. DO NOT MAKE ASSUMPTIONS.

3.8 BID PRICE SHEET

The Bidder must submit fixed discount rates on Attachment B. Bidder generated price sheets will not be accepted. The Grand Total shall include **ALL** charges for **Ephesoft Technical / Maintenance Support Services** at a firm fixed rate. Prices shall include all incidentals and associated costs required to comply with and satisfy all requirements referred to or included in this solicitation.

No remuneration is available to the Bidder beyond the Bid price for all specifications and considerations in response to this ITB, as outlined herein. Bidders will be strictly held to the prices of their Bid. The contents of this ITB and vendor Bid submission will become contractual obligations if a Contract is issued.

Quantities referred to are estimated quantities. The Department reserves the right to increase or decrease the quantities and amounts. The Department shall not be responsible for Bidder inventory or order commitment.

3.9 BIDDER ACKNOWLEDGEMENT

By submission of a signature on the FDLE Acknowledgment Form, the Bidder certifies that they comply with all terms and conditions contained herein. The Bid must contain the original signature of an authorized representative who can legally bind the Bidder. The product offered by the Bidder will conform to the specifications of this ITB without exception.

Bidders must include the signed FDLE Acknowledgement Form with their Bid response.

3.10 VENDOR GENERATED TERMS AND CONDITIONS

Department objects to and shall not consider any additional terms and conditions submitted by a Bidder, including any appearing in documents attached as part of a Bidder's response. In submitting a response, a Bidder agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, shall have no force and effect. Failure to comply with terms and conditions, including those specifying information that must be submitted with a Bid, shall be grounds for rejecting a Bid.

The Contract issued by the Department as a result of this ITB shall incorporate all terms and conditions identified herein. No oral agreements or representations shall be valid or binding upon Department or the Bidder unless expressly contained herein or by a written addendum to this ITB.

3.11 REDACTED BID SUBMISSION

Pursuant to section 19 Public Records of the PUR 1001 General Instructions to Respondents, if a Bidder considers any portion of the bid documents, data or record submitted in response to this solicitation to be exempted by law from disclosures as a public record, the Bidder must provide the Department with both an un-redacted and redacted copy of the Bid submission. As noted in this section, redacted Bids must clearly segregate and mark information which is claimed to be exempt from public records and provide the specific statutory citation for such exemption.

This redacted copy should contain FDLE's solicitation name, number, and the name of the responding Bidder on the cover, and should be clearly titled "Redacted Copy". The Redacted Copy must be provided to the Department at the same time the Bidder submits its Bid and must only exclude or obliterate those exact portions which are exempted by law from public disclosure. The entire Bid or Bid pages must not be marked proprietary, trade secret, or confidential.

IF A BIDDER FAILS TO SUBMIT A REDACTED COPY WITH ITS BID AS DESCRIBED HEREIN, DEPARTMENT IS AUTHORIZED TO PRODUCE THE ENTIRE DOCUMENT(S), DATA OR RECORDS SUBMITTED BY THE BIDDER. THE ITB AND THE SUCCESSFUL VENDOR'S BID WILL BE INCORPORATED INTO THE CONTRACT.

3.12 ADMINISTRATIVE REVIEW

Each Bidder shall submit a Bid that meets all material requirements of this ITB. Material requirements are those without which adequate analysis and comparison of Bids is impossible, or those that affect the competitiveness of the Bid. Department seeks to maximize competition and reserves the right to seek clarification or conduct a cure process from responding Bidders to obtain non-material information to complete a responsiveness review. Bids which do not meet all material requirements of this solicitation will not be considered unless, at Department's discretion, the discrepancy does not prevent review of the Bid by Department and can be easily and quickly remedied. Failure of a Bidder to provide an original/completed form or certification in the Bid submission or timeframe as provided by the Department will cause a Bidder to be deemed Non-Responsive and therefore disqualified from further consideration.

A. Required Documents

The following requirements must be met by the responding Bidder in order for the Bid to be considered responsive to this solicitation; however, this is not an exhaustive list of **Mandatory** requirements.

- FDLE ITB 2522 Acknowledgement Form
- Attachment B – FDLE ITB 2522 Price Sheet
- Attachment E – Scrutinized Companies List Certification
- Any applicable Bid Addenda
- One (1) electronic copy of Bidder's submission Flash Drive (USB)

B. Bids which do not meet all mandatory requirements of this solicitation, including the submission of all required information, will be rejected as non-responsive. A non-responsive Bid may include, but is not limited to, those which:

- Fail to utilize, complete, and/or submit the mandatory prescribed forms
- Fail to meet all mandatory requirements
- Include terms and conditions contrary to the requirements of this Bid
- Do not contain original authorized signatures
- Are not in conformance with the requirements and instructions contained herein

IF DEPARTMENT DETERMINES IN ITS SOLE DISCRETION THAT THE CONDITIONS OF THE BID DOCUMENTS ARE NOT COMPLIED WITH, OR THAT THE PRODUCT PROPOSED TO BE FURNISHED DOES NOT MEET THE SPECIFIED REQUIREMENTS, THE BID MAY BE REJECTED AS NON-RESPONSIVE.

3.13 PRICE EVALUATION

The Department will take the following steps upon opening Bids:

- A. Confirm the Bid includes a Fixed Discount Rate.
 - B. Confirm the Bid is submitted using the FDLE ITB **2522** Price Sheet (Attachment B)
 - C. Confirm the prices are clear and unambiguous
 - D. Check the arithmetic of the Bid price and conduct a Clarification Request for any computational or transfer errors noted
 - E. When evaluating Bid responses to solicitations where there is identical pricing or a pricing preference, the Department shall determine the order of award in accordance with Sections 287.057(11), 287.082, 287.084, 287.087, and 287.92, F.S.
- Certified Minority Business Enterprises

Pursuant to Section 287.057(11) F.S., if two (2) equal Bids are received and one Bid is from a Certified Minority Business Enterprise as defined in 288.703 F.S., the Department must contract with the Certified Minority Business Enterprise. Bidders must provide a copy of this certification in their Bid Response. Bidders may contact the Department of Management Services' Office of Supplier Diversity to obtain information or visit the Florida Certified Business Enterprises webpage:

https://www.dms.myflorida.com/agency_administration/office_of_supplier_diversity_osd

- Certification of Drug Free-Workplace (Attachment C)

To be considered for the drug-free workplace program preference, Bidders must provide certification that it has implemented a drug-free workplace program in accordance with 287.087 F.S. Submission of Attachment C is not required as a matter of bid responsiveness but is a precondition of eligibility for this preference.

3.14 COST OF PREPARING A VENDOR BID

Department is not liable for any costs incurred by a Vendor in responding to the ITB, including but not limited to site visits, presentations, conferences, copying, printing, travel, packaging, freight, etc. All costs associated with a Bid response for this ITB will be the responsibility of the responding Vendor.

3.15 FIRM RESPONSE

A Bidder's response to this ITB shall be considered as the Bidder's formal offer. The issuance of a Contract for the procurement of the commodity and/or service as specified in Section 2– Technical Specifications, OR Scope of Work shall constitute the FDLE's written acceptance of the successful Bid and the Contract will be forwarded to the successful Bidder.

Department may make an award within 60 days after the date of the Bid opening, during which period Bidder responses shall remain firm and shall not be withdrawn. If an award is not made within 60 days, the Bid shall remain firm until either the Department issues a Contract or the Department receives from

the Bidder written notice that the Bid is withdrawn. Any response that expresses a shorter duration may, in the Department's sole discretion, be accepted or rejected.

3.16 WITHDRAWAL OF BID

Bids submitted on or before the Bid due date may be withdrawn, amended, or replaced with another Bid up until the Bid due date and time. Bids withdrawn prior to the Bid due date and time will be returned, unopened to the Bidder at the Bidder's expense.

3.17 LEGAL REQUIREMENTS

Applicable provisions of all Federal, State, County, and local laws and administrative procedures, regulations, or rules shall govern the development, submittal, and evaluation of all Bids received in response hereto and shall govern any and all claims and disputes which may arise between Bidder's submitting a bid hereto and the Department. Lack of knowledge of the law or applicable administrative procedures, regulations, or rules by any Bidder shall not constitute a cognizable defense against their effect.

3.18 ANTITRUST VIOLATIONS

Pursuant to Section 287.137, F.S., a person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity.

3.19 SCRUTINIZED COMPANIES LIST

Pursuant to Section 287.135 F.S., at the time a Bidder submits a Response or before entering into a contract where the value exceeds \$1 million, the Bidder or Contractor must certify that the company is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and that it does not have business operations in Cuba or Syria.

Before entering into a contract of any value, the Bidder or Contractor must certify that the company is not participating in a boycott of Israel and is not on the Scrutinized Companies that Boycott Israel List.

Bidders must include the completed Attachment D to evidence this certification with their Bid response.

3.20 LESS THAN TWO RESPONSIVE BIDS

In the event that the Department receives less than two (2) Responsive Bids, the Department may negotiate the best terms and conditions.

3.21 BASIS OF AWARD

Award will be made to the responsive and responsible Bidder who after completion of the Bid evaluation submits the lowest responsive Grand Total price for all specifications and considerations in response to this ITB. An award from this Bid does not constitute an official Contract, agreement, or commitment on behalf of the State.

3.22 POSTING OF TABULATIONS

The Department Intent to Award / Bid tabulation will be posted electronically as an Agency Decision on the VIP. The Agency Decision may be viewed and will remain in active posting status for a period of seventy-two (72) hours. At the end of this active period, this tabulation will continue to be available for public view as an archive file.

Failure to file a protest within the time prescribed in Section 120.57(3) F.S., or failure to post the bond or other security required by law within the time allowed for filing a bond, shall constitute a waiver of proceedings under Chapter 120, F.S.

3.23 RESERVED RIGHTS

The Department reserves the right to:

- Amend this ITB
- Waive minor irregularities submitted in Bids
- Conduct a clarification or cure process of submissions not directly related to the Scope of Work of the ITB
- Accept or Reject any or all Bids received in whole or in part
- Re-solicit for new Bids
- Abandon the need for such commodities and/or services
- Request additional information to assess a Bidder's capabilities
- Award to the next eligible Bidder if at any time the Awarded Bidder is unable to meet all mandatory specifications or requirements as specified herein

3.24 DRAFT CONTRACT

A Draft Contract is provided (Attachment E) for consideration. Vendors should scrutinize the Draft Contract provided.

The Awarded Vendor will be required to sign and execute the Contract as provided by FDLE. The Awarded Vendor (Contractor) will be required to comply with the ITB and Contract provisions agreed to in the final Contract.

NOTE: Vendors should not submit additions, objections, or modifications with their Bid submission.

SECTION 4 – SPECIAL CONDITIONS SECTION

4.1. GENERAL CONTRACT CONDITIONS (PUR 1000)

Pursuant to Rule 60A-1.002 Florida Administrative Code (F.A.C.), the State of Florida General Contract Conditions (PUR1000) are hereby referenced and incorporated in their entirety into this ITB. Bidders are instructed to read this document in its entirety. There is no need to return this document to the Department. The FDLE ITB Special Conditions Section supersedes any conflicting terms or instructions contained in the PUR1000.

[State Purchasing \(PUR\) Forms / State Agency Resources / State Purchasing / Business Operations - Florida Department of Management Services \(myflorida.com\)](#)

4.2. COOPERATION WITH THE INSPECTOR GENERAL

Pursuant to Section 20.055(5) F.S., the Contractor (Bidder) and any subcontractors understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing.

4.3. FEDERAL EXCLUDED PARTIES LIST

A respondent or subcontractor, that at the time of Bidding or submitting a proposal for a new contract or renewal of an existing contract is on the Federal Excluded Parties List, is ineligible for, and may not submit a Proposal for, or enter into or renew a contract with an agency for goods or services, if any federal funds are being utilized.

4.4. UNAUTHORIZED ALIENS

The employment of unauthorized aliens by any Bidder is considered a violation of Section 274A (e) of the Immigration and Nationality Act. If the Bidder knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the Bid award and/ or subsequent Purchase Order or Contract.

4.5. NO PREFERENCE

Pursuant to Section 287.05701 F.S., the Department does not give preference to any vendor based on that vendor's social, political, or ideological interests.

SECTION 5 – ATTACHMENTS

- Attachment A – Question Submittal Form
- Attachment B – Price Sheet
- Attachment C – Certification of Drug-Free Workplace
- Attachment D – Scrutinized Companies List Certification
- Attachment E – Draft Contract

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**ATTACHMENT A
FLORIDA DEPARTMENT OF LAW ENFORCEMENT
WRITTEN ANSWERS TO QUESTIONS**

**FDLE ITB 2522
Ephesoft Technical / Maintenance Support Services**

All written questions are reproduced in the same format as submitted by the Vendor.

Question #1	
Answer #1	
Question #2	
Answer #2	
Question #3	
Answer #3	
Question #4	
Answer #4	
Question #5	
Answer #5	
Question #6	
Answer #6	
Question #7	
Answer #7	
Question #8	
Answer #8	
Question #9	
Answer #9	

**ATTACHMENT B
PRICE SHEET**

FDLE ITB 2522 EPHESOFT TECHNICAL / MAINTENANCE SUPPORT SERVICES

Fixed discount rates shall include **ALL** charges for packaging, handling, freight, distribution and inside delivery. Prices shall include all incidentals and associated costs required to comply with and satisfy all requirements referred to or included in this solicitation.

Description	Discount Rate
Ephesoft Technical / Maintenance Support Services – Years One (1) through (3)	%
Ephesoft Technical / Maintenance Support Services – Renewal Year One (1)	%
Ephesoft Technical / Maintenance Support Services – Renewal Year Two (2)	%
Ephesoft Technical / Maintenance Support Services – Renewal Year Three (3)	%

Optional Products and Services: Ephesoft Professional Services Hourly Rate (Up to 40 hours each year)	\$
------------------------------------------------------------------------------------------------------------------	----

BY AFFIXING MY SIGNATURE ON THIS BID RESPONSE, I HEREBY STATE THAT I HAVE READ ALL THE BID TERMS, CONDITIONS, AND SPECIFICATIONS AND AGREE TO ALL TERMS AND CONDITIONS, PROVISIONS, AND SPECIFICATIONS; AND I CERTIFY THAT I WILL PROVIDE THE COMMODITIES AND SERVICES AS SPECIFIED IN THE BID.

Signature	
Name and Title (Print Please)	
Respondent Company Name	
Federal Employee Identification Number	
Respondent Physical Address	
City, State, Zip	
Primary Contact Name / Title	
Phone Number	
Email Address	

ATTACHMENT C
DRUG-FREE WORKPLACE CERTIFICATION

Preference shall be given to businesses with drug-free workplace programs. Whenever two or more responses which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a response received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie responses will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees from drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under this solicitation a copy of the statement specified in subsection (1) above.
- 4) In the statement specified in subsection (1), notify the employees that, as a condition of performance on the commodities or contractual services that are under this solicitation, the employee will abide by the terms of the statement and will notify the business of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893, Florida Statutes, or of any controlled substance law of the United States or any state, for a violation occurring in the work place no later than five days after such conviction.
- 5) For any employee who is so convicted, impose a sanction on the employee or require the satisfactory participation in a drug abuse assistance or rehabilitation program, if such program is available in the employee's community.
- 6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

***Authorized Representative's Signature**

***Typed Name and Title of Authorized Representative**

***This individual must have the authority to bind the Respondent.**

ATTACHMENT D
SCRUTINIZED COMPANIES LIST CERTIFICATION

FDLE ITB 2522 EPHEOFT TECHNICAL / MAINTENANCE SUPPORT SERVICES

Vendor Name: _____

Vendor FEIN: _____

Vendor's Authorized Representative Name: _____

Vendor's Authorized Representative Title: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____

Email Address: _____

Pursuant to subsection 287.135 Florida Statutes, at the time a Vendor submits a Bid or before entering into a contract of any dollar amount, the Vendor or Contractor must certify that the company is not participating in a boycott of Israel, and that the company is not on the Scrutinized Companies that Boycott Israel List. For a contract where the value exceeds \$1 million, the Vendor or Contractor must certify that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or that it does not have business operations in Cuba or Syria.

As the person authorized to sign on behalf of Vendor, I hereby certify that the company identified above in the section entitled "Vendor Name" is not participating in a boycott of Israel, and is not on the Scrutinized Companies that Boycott Israel List. If the contract value will exceed \$1 million, I hereby further certify that the company identified above in the section entitled "Vendor Name" is not listed on the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and that it does not have business operations in Cuba or Syria. I understand that pursuant to section 287.135, the submission of a false certification may subject company to termination of the contract, civil penalties, attorney's fees, and/or costs.

Certified By: _____
(Authorized Signature)

Print Name and Title: _____

Date: _____

ATTACHMENT E
FDLE DRAFT CONTRACT
FDLE-###-##

This Contract, by and between _____, a company duly authorized to conduct business with the State of Florida, whose business address is _____ (hereinafter referred to as Contractor), and the State of Florida's Department of Law Enforcement, (hereinafter referred to as FDLE or alternatively, Customer, or alternatively the Department),

WITNESSETH THAT:

WHEREAS, FDLE issued Solicitation Number **### ####** and the Contractor submitted a reply to _____; and

WHEREAS, Contractor desires to enter into a Contract with FDLE to provide certain products and services; and

WHEREAS, FDLE desires to enter into a Contract with Contractor in order to acquire certain Contractor supplied products and services; and

NOW THEREFORE, Contractor and FDLE for and in recognition of considerations hereinafter set forth, do hereby agree as follows:

This Contract shall be comprised of the following documents, attachments, addenda and any subsequent amendments to this Contract. These documents, attachments, addenda and amendments shall govern the services provided by the Contractor and are hereby incorporated in, and are made a part of, this Contract. The order of precedence is as indicated below. Subsequent amendments take first precedence, with the most current documents or updates of the documents controlling in the event of a conflict between differing versions of a document which form part of or are incorporated in this Contract.

The documents specified below are hereby incorporated in, and are a part of, this Contract (including this document, captioned "Contract FDLE-###-##" which shall be first in order of precedence, with exception those sections stated below in Other Terms):

The Contract Document:

- FDLE-**###-##**
- The documents and materials attached to or incorporated by reference in the Contract including the approved final Scope of Work (Attachment **X**);
- The FDLE-ITN-**XXXX** solicitation as modified by any applicable Addendum to the FDLE-ITN-**XXXX**;
- The Contractor's Response; and
- The documents and materials attached to or incorporated by reference in the Contractor's Response

1. CONTRACT TERM

A. Initial Term

The term of this Contract shall begin from the last date signed by the parties below and continue for a period of **Number (#)** years following execution.

B. Renewal Term

The contract may be renewed for three (3), one (1) year periods or for the length of the contract whichever is greater. Renewals shall be contingent upon satisfactory performance evaluations by the Department and subject to the availability of funds.

2. STATEMENT OF WORK

3. DELIVERABLES

Deliverable Due	Minimum Performance Required	Compensation Due

4. PAYMENT SCHEDULE

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FLORIDA DEPARTMENT OF LAW ENFORCEMENT—SPECIAL TERMS AND CONDITIONS

1. Conflict of Interest

It is further understood and agreed that no employee of the Department who exercises any functions or responsibilities in connection with the planning and implementation of this contract shall have any personal financial interest, direct or indirect, in this contract.

Potential Conflict of Interest: This contract is subject to Chapter 112 of the Florida Statutes. Contracting Party shall disclose the name of any officer, director, employee, or another agent who is also an employee or official of an "agency" of the State of Florida, as that term is defined in Section 112.312, Florida Statutes. Contracting Party shall also disclose the name of any employee or official of an "agency" of the State of Florida, as that term is defined in Section 112.312, Florida Statutes, who owns, directly or indirectly, an interest of five percent (5%) or more in the Contracting Party or its affiliates.

2. Discrimination

In the performance of such services, the Contracting Party agrees not to discriminate against any employee or applicant for employment on grounds of race, creed, color, sex, age, national origin, or disability, as required by section 287.134, Florida Statutes.

3. Financial Consequences for Contractor's Failure to Perform

If the Contracting Party fails to meet the minimum level of service or performance identified in this agreement or is customary for the industry, then the Department will apply financial consequences commensurate with the deficiency. Financial consequences may include but are not limited to withholding payments until the deficiency is cured, tendering only partial payments, imposition of other financial consequences (as applicable), and termination of contract and requisition of goods or services from an alternate source. Any payment made in reliance on the Contracting Party's evidence of performance, which evidence is subsequently determined to be erroneous, will be immediately due to the Department as an overpayment.

4. Intellectual Property

The parties do not anticipate that any intellectual property will be developed as a result of this contract. However, any intellectual property developed as a result of this contract will belong to and be the sole property of the state. The rights conveyed to the state pursuant to this Agreement do not include rights to any preexisting Intellectual Property used, developed and refined by the Contracting Party and its subcontractors during their provision of Services under this Agreement. This provision will survive the termination or expiration of any contract.

5. Non-Material Errors

CONTRACTOR and FDLE agree that non-material errors in contract language, terms, and conditions (e.g., typos and other obvious errors) will be correctable without amending the Agreement provided that the nature of the Agreement is not altered by such correction.

6. The Department is Self-Insured

The Department is self-insured for its torts to the extent provided in Section 768.28, Florida Statutes, to cover bodily injury, death and property damage arising as a consequence of the acts and omissions to act of its officers, employees, and agents. The Department is without authority to insure the contracting party in any way. The Department shall not be deemed to assume any liability for the acts, omissions to act and negligence of the Contracting Party, its agents, servants and employees; nor shall the Contracting Party exclude liability for its own negligence to the Department or any third party, except as allowed by law and agreed to by the Department. The Department is without authority to indemnify or hold harmless the Contracting Party.

Unless authorized by law and agreed to in writing, the Department shall not be liable to pay attorney fees, interest, late charges, and service fees and/or costs of collection.

7. Security and Confidentiality

All agents and subcontractors with access to FDLE computer networks and systems to be engaged by the Contracting Party in the performance of this contract must be approved by FDLE and must abide by all applicable terms and conditions of the contract as well as FDLE security of information resources policies and procedures, State of Florida information security laws and rules.

Whenever necessitated by a legitimate concern for reasonable security precautions as determined by the Department and without regard to the identity of any individual, the Department will require the Contracting Party(ies) and/or employees of the Contracting Party(ies) to submit to, and successfully pass, an appropriate security background investigation prior to being allowed access to any of the Department's facilities to perform those services as set forth in this contract. FDLE reserves the right to have Contracting Party's staff removed from the account when it is determined to be in the best interest of the State.

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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.

IN WITNESS WHEREOF, the FDLE and Contractor have caused this Contract to be executed by their respective undersigned official(s) authorized to do so, effective on the date of final execution.

<i>Contractor</i>	Florida Department of Law Enforcement
<i>Signature</i>	<i>Signature</i>
<i>Print Name</i>	<i>Print Name</i>
<i>Title</i>	<i>Title</i>
<i>Date</i>	<i>Date</i>

EXHIBIT 1
General Contract Conditions
PUR 1000

Contents

1. Definitions.
2. Contract Formation and Amendment.
3. Contract Construction and Administration.
4. Contract Term, Suspension, and Termination.
5. Performance.
6. Inspection.
7. Payment.
8. Disputes and Liabilities.
9. Compliance with Laws.
10. Public Records.
11. Security and Confidentiality.
12. Cooperative Purchasing.

1. Definitions. Capitalized terms used herein are defined as follows:

- a. "Attachments" means the attachments, addenda, schedules, exhibits, and other documents, however so titled, attached hereto or incorporated by reference herein.
- b. "Business Days" means Monday through Friday, inclusive, excluding State holidays specified in section 110.117, Florida Statutes ("F.S").
- c. "Contract" means the legally enforceable agreement between the Customer and Contractor to which this PUR 1000 form is attached, including all Attachments thereto. This term encompasses both written agreements and purchase orders, as each is defined in Rule 60A- 1.001, Florida Administrative Code ("F.A.C.").
- d. "Contractor" means the person or entity that is a party to the Contract and is providing Products to the Customer.
- e. "Customer" means the agency, as defined in section 287.012, F.S., that is a party to the Contract. For purchases off a term contract, as defined in section 287.012, F.S., this term also includes the eligible user, as defined in Rule 60A-1.001, F.A.C, that is a party to the Contract.
- f. "Product" means any deliverable under the Contract, which may include commodities and contractual services, as each is defined in section 287.012, F.S. "Product" does not include, and no State funding under the Contract is being provided for, promoting, advocating for, or providing training or education on "Diversity, Equity, and Inclusion" ("DEI"). DEI is any program, activity, or policy that classifies individuals on the basis of race, color, sex, national origin, gender identity, or sexual orientation and promotes differential or preferential treatment of individuals on the basis of such classification or promotes the position that a group or an individual's action is inherently, unconsciously, or implicitly biased on the basis of such classification.
- g. "State" means the State of Florida.

2. Contract Formation and Amendment.

- a. Formation. If the Contract is a written agreement as defined in Rule 60A-1.001, F.A.C., the Contract is effective upon the date last signed by all parties, unless a different date is specified herein. If the Contract is a purchase order as defined in Rule 60A-1.001, F.A.C., the Contract is effective upon the date of issuance by the Customer to the Contractor, and the Contractor's performance under the purchase order is deemed to be acceptance of the terms thereof.
- b. Amendment. The Contract contains all the terms and conditions agreed upon by the parties and will govern all transactions between the parties. The Contract may only be amended upon mutual written agreement signed by both parties, or upon the Customer's issuance of a change order to a purchase order, as defined in Rule 60A-1.001, F.A.C., deemed to be accepted by the Contractor upon the continued performance thereof. No oral agreements or representations will be valid or binding upon either party. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to the Product upon delivery (e.g., attachment or inclusion of standard preprinted forms, service agreements, end user agreements, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. The Customer's acceptance of the Product or processing of documentation on forms furnished by the Contractor for approval or payment will not constitute acceptance of the proposed modification to the Contract terms and conditions.

The parties may, by amendment, modify the Contract to alter, add to, or deduct from the Contract specifications, provided that such changes are within the general scope of the Contract. The parties may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. The parties may also make an equitable adjustment in price if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control,

(2) the volatility affects the marketplace or industry, not just the particular Term Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.

If the Contract is a purchase off a term contract, as defined in section 287.012, F.S., the purchase is limited to Products offered under the Term Contract, and no additional Products may be provided under a purchase off the Term Contract.

3. Contract Construction and Administration.

- a. Construction. Unless the context requires otherwise, (i) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation;" (ii) the word "or" is not exclusive; and (iii) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to the Contract as a whole, inclusive of all Attachments. Unless the context requires otherwise, references herein to (i) sections or Attachments mean the sections of, or Attachments to, the Contract; (ii) an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (iii) a statute, rule, or other law or regulation means such statute, rule, or other law or regulation as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. Unless the context requires otherwise,

whenever the singular is used in the Contract, the same will include the plural, and whenever the plural is used herein, the same will include the singular, where appropriate. All references to "\$" or "dollars" means the United States Dollar, the official and lawful currency of the United States of America.

The Contract will be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Attachments referred to herein will be construed with, and as an integral part of, the Contract to the same extent as if they were set forth verbatim herein.

b. Administration.

- i. Execution in Counterparts. If the Contract is a written agreement as defined in Rule 60A-1.001, F.A.C., it may be executed in counterparts, each of which will be an original and all of which will constitute but one and the same instrument.
- ii. 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. If the Contract is a purchase order, as defined in Rule 60A-1.001, F.A.C., the Contractor warrants that the individual established to receive the purchase order is authorized to do so and to bind the Contractor to the terms of the Contract.
- iii. Notices. Where the term "written notice" is used to specify a notice requirement herein, said notice will be deemed to have been given (i) when personally delivered; (ii) when transmitted via facsimile (with confirmation of receipt) or email (with confirmation of receipt); (iii) the day immediately following the day (except if not a Business Day then the next Business Day) on which the notice or communication has been provided prepaid by the sender to a recognized overnight delivery service; or (iv) on the date actually received except where there is a date of the certification of receipt.

Unless otherwise specified, each party shall deliver all notices to the other party's Contract Manager. Either party may notify the other by email of a change to a designated contact providing the contact information for the newly designated contact, and such notice is sufficient to effectuate this change without requiring a written amendment to the Contract or the issuance of a change order.

- iv. Severability. If a court deems any non-material provision of the Contract void or unenforceable, all other provisions will remain in full force and effect. Upon a determination that any material provision is void or unenforceable, the parties shall negotiate in good faith to modify this Contract to give effect to the original intent of the parties as closely as possible in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.
- v. Waiver. The delay or failure by the Customer to exercise or enforce any of its rights under the Contract will not constitute or be deemed a waiver of the Customer's right thereafter to enforce those rights, nor will any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- vi. Survivability. The Contract and any promises, covenants, and representations made herein

are binding upon the parties hereto and all respective heirs, assigns, and successors in interest. The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of the Contract, including without limitation, the obligations regarding overpayments, confidentiality, indemnity, proprietary interests, and public records, will survive termination or expiration of the Contract.

- vii. Third Party Beneficiaries. The parties acknowledge and agree that the Contract is for the benefit of the parties hereto and any permitted assignee. The Contract is not intended to confer any legal rights or benefits on any other party.

4. Contract Term, Suspension, and Termination.

- a. Term. The initial term of the Contract will be as indicated in the Contract. The Customer, in its sole discretion, may renew the Contract, in whole or in part, for a period that may not exceed three (3) years or the initial term of the Contract, whichever is longer, by providing written notice to the Contractor. If the Contract was awarded pursuant to a competitive solicitation, as defined in section 287.012, F.S., the pricing for the renewal period will be as set forth in the Contractor's response to the competitive solicitation. No costs may be charged for the renewal, and the renewal is contingent upon satisfactory performance evaluations and subject to availability of funds. Exceptional purchase contracts pursuant to sections 287.057(3)(a) and (c), F.S., may not be renewed.
- b. Suspension of Work. The Customer may, in its sole discretion, suspend any or all activities under the Contract, at any time, when in the best interests of the Customer to do so. The Customer shall provide the Contractor written notice outlining the particulars of the suspension. Examples of the reason for suspension include budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall cease performance to the extent required by the notice. Within ninety (90) calendar days of the suspension, or any longer period agreed to by the Contractor, the Customer shall either (i) issue a notice authorizing the resumption of performance, at which time the Contractor shall resume activity; or (ii) terminate the Contract. Suspension of work will not entitle the Contractor to any compensation for services not performed or commodities not delivered during the suspension period nor for any additional compensation.
- c. Termination.
 - i. Termination for Convenience. The Customer, by written notice to the Contractor thirty (30) calendar days in advance, may terminate the Contract in whole or in part when the Customer determines in its sole discretion that it is in the Customer's interest to do so. The Contractor shall not furnish any Product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor will not be entitled to recover any cancellation charges or lost profits. Termination for Cause. The Customer may terminate the Contract if the Contractor fails to (i) deliver the Product within the time specified in the Contract or any extension agreed to by the Customer, (ii) maintain adequate progress, thus endangering the performance of the Contract, (iii) honor any term of the Contract, or (iv) abide by any statutory, regulatory, or licensing requirement. The Customer may, at its sole discretion, (i) immediately terminate the Contract, (ii) notify the Contractor of the deficiency with a Contract requirement and require that the deficiency be corrected within a specified time, otherwise the Contract will terminate at the end of such time, or (iii) take other action deemed appropriate by the Customer. The Contractor shall continue to work on

any work not terminated.

- ii. Except for defaults of subcontractors at any tier, the Contractor will not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor will not be liable for any excess costs for failure to perform, unless the subcontracted Products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract. The Customer shall notify the Department of Management Services of any vendor that has met the grounds for placement of the vendor on the Department of Management Services' Suspended Vendor List, as required in section 287.1351, F.S.
- iii. Termination for Non-Compliance with E-Verify. Pursuant to section 448.095(5)(c)1., F.S., the Customer shall terminate the Contract if it has a good faith belief that the Contractor has knowingly violated section 448.09(1), F.S. Pursuant to section 448.095(5)(c)2., F.S., if the Customer has a good faith belief that a subcontractor knowingly violated section 448.09(1), F.S., the Customer shall promptly notify the Contractor and order the Contractor to immediately terminate the contract with the subcontractor.
- iv. Termination Related to Statutory Certifications. At the Customer's option, the Contract may be terminated if the Contractor is placed on any of the lists referenced in the attached PUR 7801, Vendor Certification Form, or would otherwise be prohibited from entering into or renewing the Contract based on the statutory provisions referenced therein.
- v. Termination for Refusing Access to Public Records. In accordance with section 287.058(1)(c), F.S., the Customer may unilaterally terminate the Contract if the Contractor refuses to allow 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 Article I, Section 24(a) of the Florida Constitution, and section 119.07(1), F.S.
- vi. Termination for Non-Appropriation. In accordance with section 287.0582, F.S., the Customer may terminate the Contract if, in the Customer's determination, no annual appropriation is provided for the Contract, or the Products provided hereunder, by the Legislature.

5. Performance.

- a. Warranty of Ability to Perform. Upon the effective date of the Contract, and each year on the anniversary date of the Contract, the Contractor shall submit to the Customer a completed PUR 7801, Vendor Certification Form. This requirement will not apply to purchases off a term contract, as defined in section 287.012, F.S., unless specifically requested in the Contract by the Customer.

Additionally, the Contractor shall promptly notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract (including potential inability to renew

the Contract due to section 287.138 or 908.111, F.S.) or if it or its suppliers, subcontractors, or consultants under the Contract are placed on the Suspended Vendor, Convicted Vendor, Discriminatory Vendor, or Antitrust Violator Vendor Lists. The Contractor shall use commercially reasonable efforts to avoid or minimize any delays in performance and shall inform 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 Customer has caused or will cause the Contractor to be unable to perform its obligations on time, the Contractor shall promptly so notify the Customer and use commercially reasonable efforts to perform its obligations on time notwithstanding the Customer's delay.

- b. Further Assurances. The parties shall, with reasonable diligence, do all things and provide all reasonable assurances as may be necessary to complete the requirements of the Contract, and each party shall provide such further documents or instruments requested by the other party as may be reasonably necessary or desirable to give effect to the Contract and to carry out its provisions. The Customer is entitled at all times, upon request, to be advised as to the status of work being done by the Contractor and the details thereof.
- c. 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 Customer. However, the Contractor may waive its right to receive payment and assign the same upon written notice to the Customer. In the event of any assignment, the Contractor remains secondarily liable for the performance of the Contract, unless the Customer expressly waives such secondary liability in writing. The Customer may assign the Contract with prior written notice to the Contractor of its intent to do so.
- d. Employees, Subcontractors, and Agents.
 - i. Subcontracting. The Contractor is solely responsible for ensuring that any subcontractor(s) utilized perform in accordance with the Contract, and the Contractor acknowledges that it will not be released of its contractual obligations to the Customer because of any subcontract. The use of the term "subcontractor" may refer to affiliates, resellers, dealers, distributors, partners, teammates, and all other third parties utilized by the Contractor at any tier under the Contract.

The Contractor shall use only those subcontractors approved by the Customer in writing. Subcontractors named in the Contract will be deemed to be approved by the Customer. For subcontractors proposed after the effective date of the Contract, the Contractor shall submit a written request to the Customer's Contract Manager specifying (i) the name of the proposed subcontractor; (ii) the services to be performed by the subcontractor; (iii) the time of performance; (iv) the Contractor's proposed method of subcontractor performance monitoring; (v) certification of subcontractor's compliance with all legal and contractual requirements related to performance (e.g., licensing, background screening, insurance etc.); (vi) a copy of the subcontract, if requested by the Customer; and (vii) indication of whether the subcontractor is an Office of Supplier Diversity registered Florida-based woman-, veteran-, or minority-owned small businesses. The Customer has the final approval authority of all proposed subcontractors. The Contractor's use of a subcontractor not approved by the Customer will be considered a material breach of the Contract.

- ii. **Qualifications and Access.** All Contractor employees, subcontractors, or agents performing work under the Contract must be properly trained technicians who meet or exceed any specified training qualifications. Upon request, the Contractor shall furnish a copy of technical certification or other proof of qualification. All Contractor employees, subcontractors, or agents performing work under the Contract shall comply with all Contract terms and controlling laws and regulations relevant to the work being performed. The Customer may either conduct, and the Contractor shall cooperate in, or require the Contractor to conduct, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The Customer may refuse access to, or require replacement of, any employee, subcontractor, or agent for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with the Customer's security or other requirements. The Customer may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.
- iii. **E-Verify.** The Contractor shall comply with section 448.095, F.S., including the obligation to register with and use the U.S. Department of Homeland Security's (DHS) E-Verify system to verify the work authorization status of all new employees of the Contractor.
- iv. **Independent Contractor.** The Contractor and its employees, agents, representatives, and subcontractors are not employees or agents of the Customer or State and are not entitled to any benefits of Customer or State employees. The parties shall take all actions necessary to ensure that Contractor's employees, subcontractors, and other agents are not construed as such. Such actions include ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the Customer or State. Neither the Customer nor the State will be bound by any acts or conduct of the Contractor or its employees, subcontractors, or agents. The Contractor shall include this provision in all of its subcontracts under the Contract.
- e. **Transportation and Delivery.** Unless otherwise specified, prices listed in the Contract for commodities include all charges for packing, handling, freight, distribution, and inside delivery. Transportation must be FOB Destination to any point within thirty (30) calendar days after the Customer places an order. The Contractor, within five (5) Business Days after receiving an order, shall notify the Customer of any potential delivery delays. Evidence of inability to timely deliver or intentional delays will be considered a material breach of the Contract.
- f. **Packaging.** Tangible Products must be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging will become and remain the Customer's property.
- g. **Installation.** Where installation is required under the Contract, the Contractor shall be responsible for placing and installing the Product in the required locations at no additional charge, unless otherwise specified in the Contract. The Contractor's authorized Product and price list must clearly and separately identify any additional installation charges. All materials used in the installation must be of good quality and free of defects that would diminish the Product's appearance or render it structurally or operationally unsound. Installation includes the furnishing

of any equipment, rigging, and materials required to install or replace the Product in the proper location. The Contractor shall protect the site from damage and shall repair damages or injury caused during installation, unless caused by the Customer. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. The Contractor shall perform installation work to cause the least inconvenience and interference with the Customer's use of the site and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work must be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

- h. Risk of Loss. Until acceptance, the risk of loss or damage will remain with the Contractor. The Contractor shall file, process, and collect all damage claims. To assist the Contractor with damage claims, the Customer shall (i) record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; (ii) report damages to the carrier and the Contractor; and (iii) provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. If the Customer rejects a Product, the Contractor shall remove it from the premises within ten (10) Business Days after notification of rejection. Upon rejection notification, the risk of loss of a rejected or non-conforming Product will remain with the Contractor. Rejected Product not removed by the Contractor within ten (10) Business Days will be deemed abandoned by the Contractor, and the Customer will have the right to dispose of it as its own property. The Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of a rejected Product.
- i. Literature. Upon request, the Contractor shall furnish literature reasonably related to the Product offered, including user manuals, price schedules, catalogs, and descriptive brochures.
- j. Product Version. The Contract will be deemed to reference a manufacturer's most recently released model or version of the Product at the time of the order unless the Customer specifically requests in writing an earlier model or version and the Contractor is willing to provide such model or version.
- k. Real Property. Pursuant to section 287.05805, F.S., any State funds provided for the purchase of or improvements to real property are contingent upon the Contractor granting to the State a security interest in the property at least to the amount of State funds provided for at least five (5) years from the date of purchase or the completion of the improvements or as further required by law.
- l. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE). In accordance with section 946.515(6), F.S., if the Contractor is a private contract vendor and if a product or service required for the performance of the Contract is certified by or is available from PRIDE and has been approved in accordance with section 946.515(2), 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.

The above clause is not applicable to subcontractors unless otherwise required by law. Additional information about PRIDE and the products it offers is available at <http://www.pride-enterprises.org>.

- m. Products Available from the Blind or Other Handicapped (RESPECT). In accordance with section 413.036(3), F.S., if the Contractor is a private contract vendor and if a product or service required for the performance of the Contract is on the procurement list established pursuant to section 413.035(2), 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, F.S.; IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 413.036(1) AND (2), 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 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>.

- n. 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, subcontractors, 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 suppliers if no alternate source of supply is available to the Contractor.

In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (i) within ten (10) calendar 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 (ii) if a 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 ANY DELAY except if such delay is caused by the fraud, bad faith, or active interference of the Customer. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy, and a rebuttable presumption of prejudice will exist based on Contractor's untimely notice. The Contractor shall not assert any claim for damages related to such delay. The Contractor will not be entitled to an increase in the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact, or other costs, expenses, or damages, including 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 subsection 5.n., the Customer may unilaterally (and with no recourse on the part of the Contractor) identify and use an alternate source to complete any work under the Contract as the

Customer deems necessary, in its sole discretion. After the causes have ceased to exist, the Contractor shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the Customer or State, in which case the Customer may (i) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to the Customer with respect to Products subjected to allocation; or (ii) terminate the Contract in whole or in part.

- o. Exclusivity. The Contract is not an exclusive license to provide the Products described in the Contract. The Customer may, without limitation and without recourse by the Contractor, contract with other vendors to provide the same or similar Products.

6. Inspection.

- a. Inspection at Contractor's Site. The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment, product, plant, or other facilities of the Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.
- b. Statutory Inspection Rights. If services are to be provided pursuant to the Contract, in accordance with section 216.1366, F.S., the Customer is authorized to inspect the: (i) financial records, papers, and documents of the Contractor that are directly related to the performance of the Contract or the expenditure of State funds; and (ii) programmatic records, papers, and documents of the Contractor which the Customer determines are necessary to monitor the performance of the Contract or to ensure that the terms of the Contract are being met. The Contractor shall provide such records, papers, and documents requested by the Customer within ten (10) Business Days after the request is made.

Further, for any Contract for services with a nonprofit organization as defined in section 215.97(2)(m), F.S., the Contractor must provide documentation that indicates the amount of state funds:

- 1. Allocated to be used during the full term of the contract for remuneration to any member of the board of directors or an officer of the contractor; and
- 2. Allocated under each payment by the public agency to be used for remuneration of any member of the board of directors or an officer of the contractor.

The documentation must indicate the amounts and recipients of the remuneration.

- c. Inspection Compliance. The Contractor understands its and its subcontractors' (if any) duty, pursuant to section 20.055(5), F.S., to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any information the State official deems relevant to the Contractor's integrity or responsibility.

Such information may include 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 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 the Contract or any other agreement between the Contractor and the State which results in the suspension or

debarment of the Contractor. Such costs will include investigators' salaries, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor will not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

7. Payment.

- a. Annual Appropriations. Pursuant to section 287.0582, F.S., the State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature.
- b. Invoicing and Payment. The Contractor shall include the Contract number and vendor identification information on all invoices. The Customer may require any other information from the Contractor that it deems necessary to verify any charges shown on the invoice, including detail sufficient for a proper preaudit or post-audit for such bills pursuant to section 287.058(1)(a), F.S.

The Customer shall make payments in accordance with section 215.422, F.S., which governs time limits for payment of invoices. The Contractor shall make payments to any subcontractors and suppliers in accordance with section 287.0585, F.S., if applicable. Invoices that must be returned to a Contractor due to preparation errors will delay payment. The Customer is responsible for all payments under the Contract.

The Department of Financial Services has established a Vendor Ombudsman for vendors having trouble obtaining timely payment from State agencies. The Vendor Ombudsman can be reached at (850) 413-5516.

- c. Overpayments. The Contractor shall return any overpayments, including those due to unearned funds or funds disallowed pursuant to the terms of the Contract that were disbursed to the Contractor by the Customer. The Contractor shall return any overpayment within forty (40) calendar days after the earlier of: (1) discovery by the Contractor (including discovery by its independent auditor, if any), or (2) notification by the Customer of the overpayment.
- d. Transaction Fee. The State, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to section 287.057(24), F.S. All payments issued by agencies to registered vendors for purchases of commodities or contractual services under Chapter 287, F.S., shall be assessed a transaction fee of one percent (1.0%) of the total amount of the payments received from the State or eligible users, as prescribed by Rule 60A-1.031, F.A.C., or as may otherwise be established by law. Vendors shall pay the Transaction Fee and are subject to automatic deduction of the transaction fee when automatic deduction becomes available. Vendors shall submit any monthly reports required pursuant to Rule 60A-1.031, F.A.C. All such reports and payments are subject to audit. The Customer will have grounds for declaring the vendor in default if the vendor fails to comply with the payment of the transaction fee or reporting of payments, which may subject the vendor to being suspended from business with the State.
- e. Taxes. The Customer, as a governmental entity of the State, does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The Customer will not pay for any

personal property taxes levied on the Contractor or any taxes levied on employees' wages. The Customer will explicitly note any exceptions to this paragraph in the Contract.

- f. Leases and Installment Purchases. In accordance with section 287.063, F.S., if the Contract provides for a lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017, F.S., then the Customer's obligations under the Contract are contingent upon approval of the Contract by the Chief Financial Officer, as defined in section 17.001, F.S.
- g. Travel. Pursuant to section 287.058(1)(b), F.S., if travel is authorized under the Contract, the Contractor shall submit such in accordance with section 112.061, F.S., except that the Customer may establish rates lower than the maximum provided in section 112.061, F.S.
- h. Retention of Payments. The Customer may, in addition to other remedies available to it at law or equity and upon written notice to the Contractor, retain such monies from amounts due to the Contractor as may be necessary to satisfy any claim for payment, including under the indemnification clause, payment for financial consequences, and payment for damages and the like asserted by or against the Customer. The Customer reserves the right to set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due to the Contractor under any contract with the State. The exercise of these rights will not be a breach of the Contract, nor will they in any way entitle the Contractor to a claim against the Customer or State, including for damages.

8. Disputes and Liabilities.

- a. Dispute Resolution. Should any disputes arise concerning the Contract, the parties shall act immediately to resolve any such disputes. Time is of the essence in the resolution.
 - i. Dispute Resolution Process.
 - (a) Contract Manager Review. The parties shall resolve disputes through the submission of their dispute to the Customer's Contract Manager, who shall reduce a decision to writing and furnish a copy to each party within ten (10) Business Days from the date that the Customer's Contract Manager receives the dispute. The Customer's Contract Manager's decision shall be final unless a party provides the other party with written notice of the party's disagreement with the decision within ten (10) Business Days from the date of the Customer's Contract Manager's decision. If a party disagrees with the Customer's Contract Manager's decision, the party may proceed to subsection (b) below.
 - (b) Meeting between the Principals. If either party disagrees with the Customer's Contract Manager's decision, such disagreeing party shall notify the other party of the disagreement within ten (10) Business Days. The parties shall then schedule a meeting between each party's principal (for the Customer, the Customer head or designee; for the Contractor, the Chief Executive Officer or designee) on a mutually agreed upon date, no later than ten (10) Business Days after the provision of the notice. The principals shall attempt to mutually resolve the disagreement at such meeting. If the meeting between the principals fails to resolve the disagreement, the parties shall proceed to subsection (c) below.
 - (c) Mediation. Prior to initiating any litigation, the parties, upon mutual agreement, may

mediate such dispute. If such mediation is not completed within 100 calendar days from receipt of the Customer's Contract Manager's decision, then either party may commence litigation.

If the dispute is not resolved through the full process in subsections (a) - (c) above (or (a) - (b), if mediation is not agreed to), either party may pursue any available legal or equitable remedies.

- ii. **Contractor's Obligation to Perform While Disputes are Pending.** The Contractor shall proceed diligently with performance under the Contract pending the final resolution of any dispute or request for relief, claim, appeal, or action arising under the Contract and shall comply with directions to perform from the Customer. Should the Contractor not perform while a dispute is pending, including by not performing disputed work, such nonperformance by the Contractor may be deemed to be an unexcused breach of the Contract which is separate and apart from any other dispute.
- b. **Governing Law and Venue.** The Contract will be governed by, and construed in accordance with, the laws of the State. Jurisdiction and venue for suit arising under the terms of the Contract will exclusively be in the appropriate State court located in Leon County, Florida. Except as otherwise provided by law, the parties agree to be responsible for their own attorney's fees and costs incurred in connection with disputes arising under the Contract terms.
- c. **Remedies Cumulative.** No remedy herein conferred upon or reserved to either party is intended to be exclusive of any other remedy or remedies, and each and every such remedy will be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.
- d. **JURY WAIVER. THE PARTIES, ON BEHALF OF THEMSELVES AND ASSIGNS, WAIVE ALL RIGHTS TO TRIAL BY JURY FOR ANY ACTION, APPEAL, CLAIM, OR PROCEEDING, WHETHER IN LAW OR IN EQUITY, WHICH IN ANY WAY ARISES OUT OF OR RELATES TO THE CONTRACT OR ITS SUBJECT MATTER.**
- e. **Insurance Requirements.**
 - i. **Coverages.**
 - (a) In General. During the Contract term, the Contractor shall, at its sole expense, provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract.
 - (b) Workers' Compensation Insurance. The Contractor shall maintain Workers' Compensation insurance as required by State law; to the extent that any work required by the Contract will be performed outside of the State, the Contractor shall maintain Workers' Compensation Insurance as required by that jurisdiction. If 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 shall provide adequate insurance, satisfactory to the Customer, for the protection of employees not otherwise protected.
 - ii. **Terms.**
 - (a) In General. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. Upon request, the Contractor shall provide the Customer

with certificate(s) of insurance. The limits of coverage under each policy maintained by the Contractor will not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies must be through insurers authorized or eligible to write policies in the State or through a self-insurance program established and operating under the laws of the State. The Contractor shall notify the Customer sixty (60) calendar days before any policy is canceled or terminated. All insurance policies must also provide that the insurer notifies the Customer if the policy is cancelled.

- (b) No Loss Deductible Clause. The Customer will be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy. The Contractor shall be solely responsible for payment of such deductible.
- (c) Duration. The insurance policies identified above must be "per occurrence" and maintained throughout the Contract term.
- (d) Subcontractor's Insurance. The Contractor shall ensure that its subcontractors maintain the levels of insurance as required in this section.

- f. Indemnification. For any and all third-party claims, actions, demands, liabilities, and expenses of any kind which are caused by, related to, growing out of or happening in connection with the Contract (including any determination arising out of or related to the Contract that the Contractor or its employees, agents, subcontractors, assignees, or delegates are not independent contractors in relation to the Customer or State), the Contractor shall be fully liable for the actions of its employees, subcontractors, and agents and shall fully indemnify, defend, and hold harmless the Customer and the State (including each of their current and former officers, agents, and employees) for any and all loss, damage, injury, costs, reasonable expenses, or other casualty to person or property. Without limiting this indemnification requirement, the Customer may provide the Contractor (i) written notice of any action or threatened action, (ii) the opportunity to take over and settle or defend any such action at the Contractor's sole expense, and (iii) assistance in defending the action at the Contractor's sole expense. The above indemnity requirement does not apply to that portion of any loss or damages proximately caused by the negligent act or omission of the Customer or the State. Nothing herein is intended to act as a waiver of the Customer's or State's sovereign immunity or to be deemed consent by the Customer or State or its subdivisions to suit by third parties.

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

- g. Limitation of Liability. For all claims against the Contractor under the Contract, and regardless of the basis on which the claim is made, the Contractor's aggregate liability for direct damages under the Contract will be limited to the greater of \$200,000 or the dollar value of the Contract (which is the higher of the total estimated value of the Contract or two times the charges for Products rendered by the Contractor under the Contract if no estimated value is determinable). This limitation will not apply to any claim arising under an indemnity provision of the Contract or any provision of the Contract relating to insurance required to be provided by the Contractor.

Unless otherwise specifically enumerated in the Contract, no party will be liable to the other for special, indirect, punitive, or consequential damages, including lost data or records (unless the Contract requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party will be liable for lost profits, lost revenue, or lost institutional operating savings.

For damages other than those excluded in the preceding paragraph, the Customer's liability is limited to: 1) if the damage is the Customer's failure to pay amounts due to the Contractor for Products received and accepted by the Customer pursuant to the Contract, then only the amount due for such Products and any interest owed under section 215.422, F.S.; or 2) in the event the damage is not related to the Customer's failure to comply with the payment provisions of the Contract, to the maximum of the limited waiver of sovereign immunity provided for in section 768.28, F.S.

9. Compliance with Laws.

- a. In General. The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business and that are applicable to the Contract, including those of federal, state, and local agencies having jurisdiction and authority, and shall ensure that any and all subcontractors utilized do the same. The Contractor represents and warrants that no part of the funding under the Contract will be used in violation of any state or federal law, including, but not limited to, 8 U.S.C. § 1324 or 8 U.S.C. § 1325, or to aid or abet another in violating state or federal law. The Customer may terminate the Contract at any time if the Contractor violates, or aids or abets another in violating, any state or federal law.

If the requirements of the Contract conflict with any governing law, codes, or regulations, the Contractor shall notify the Customer in writing, and the parties shall amend the Contract to comply with the applicable code or regulation. Similarly, if the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the Products, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the complete discretion to accept any such alteration or to terminate the Contract at no further expense to the Customer.

- b. Lobbying and Integrity. The Contractor shall not use funds provided under the Contract in a manner that violates the provisions of sections 11.062 and 216.347, F.S. 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 during the Contract's term. In addition to any applicable statutory restrictions, the Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (i) 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 exercises of discretion, or violation of a known legal duty; or (ii) 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 (ii), "gratuity" means any payment in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
- c. Accessibility Requirements. If the Products to be provided include an information technology system that is accessed by the public or State employees, the Contractor shall comply with section 508 of the Rehabilitation Act of 1973, as amended and 29 U.S.C. s. 794(d), including the regulations set forth under 36 C.F.R. part 1194. Section 282.601(1), F.S., states that "state government shall,

when developing, competitively procuring, maintaining, or using electronic information or information technology acquired on or after July 1, 2006, ensure that State employees with disabilities have access to and are provided with information and data comparable to the access and use by State employees who are not individuals with disabilities.”

10. Public Records.

- a. General Record Management and Retention. The Contractor shall retain sufficient records to substantiate claims for payment under the Contract and shall retain all other records that were made in relation to the Contract for the longer of five (5) 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: <https://dos.fl.gov/library-archives/records-management/general-records-schedules/>.
- b. Identification and Protection of Confidential Information. Article 1, section 24, of the Florida Constitution, guarantees every person access to public records, and section 119.011, F.S., provides a broad definition of “public record.” As such, records submitted to the Customer (or any other State agency) are public records and are subject to disclosure unless exempt from disclosure by law. If the Contractor considers any portion of a record it provides to the Customer (or any other State agency) to be trade secret or otherwise confidential or exempt from disclosure under Florida or federal law (“Confidential Information”), the Contractor shall mark as “confidential” each page of a document or specific portion of a document containing Confidential Information and simultaneously provide the Customer (or other State agency) with a separate, redacted copy of the record. The Contractor shall state the basis of the exemption that the Contractor contends is applicable to each portion of the record redacted, including the specific statutory citation for such exemption. The Contractor shall only redact portions of records that it claims contains Confidential Information. If the Contractor fails to mark a record it claims contains Confidential Information as “confidential,” or fails to submit a redacted copy in accordance with this section of a record it claims contains Confidential Information, the Customer (or other State agency) shall have no liability for release of such record. The foregoing will apply to every instance in which the Contractor fails to both mark a record “confidential” and redact it in accordance with this section, regardless of whether the Contractor may have properly marked and redacted the same or similar Confidential Information in another instance or record submitted to the Customer (or any other State agency).

In the event of a public records request, to which records the Contractor marked as “confidential” are responsive to the request, the Customer shall provide the Contractor-redacted copy to the requestor. If the Contractor has marked a record as “confidential” but failed to provide a Contractor-redacted copy to the Customer, the Customer may notify the Contractor of the request and the Contractor may have up to ten (10) Business Days from the date of the notice to provide a Contractor-redacted copy, or else the Customer may release the unredacted record to the requestor without liability. If the Customer provides a Contractor-redacted copy of the documents and the requestor asserts a right to the Contractor-redacted Confidential Information, the Customer shall promptly notify the Contractor such an assertion has been made. The notice will provide that if the Contractor seeks to protect the Contractor-redacted Confidential Information from release it must, within thirty (30) days after the date of the notice and at its own expense, file a cause of action seeking a declaratory judgment that the information in question is exempt from section 119.07(1), F.S., or other applicable law and an order prohibiting the Customer from publicly disclosing the information. The Contractor shall provide written notice to the Customer of any cause of action filed. If the Contractor fails to file a cause of action within thirty (30) days the Customer may

release the unredacted copy of the record to the requestor without liability.

If the Customer is requested or compelled in any legal proceeding to disclose documents that are marked as “confidential” (whether by oral questions, interrogatories, requests for information or documents, subpoena, or similar process), unless otherwise prohibited by law, the Customer shall give the Contractor prompt written notice of the demand or request prior to disclosing any Confidential Information to allow the Contractor to seek a protective order or other appropriate relief at the Contractor’s sole discretion and expense. If the Contractor fails to take appropriate and timely action to protect the Confidential Information contained within documents it has marked as “confidential” or fails to provide a redacted copy that may be disclosed, the Customer may provide the unredacted records in response to the demand without liability.

The Contractor shall protect, defend, and indemnify the Customer for all claims, costs, fines, settlement fees, and attorneys’ fees, at both the trial and appellate levels, arising from or relating to the Contractor’s determination that its records contain Confidential Information. In the event of a third-party claim brought against the Customer for failure to release the Contractor’s redacted Confidential Information, the Contractor shall assume, at its sole expense, the defense or settlement of such claim, including attorney’s fees and costs at both the trial and appellate levels. If the Contractor fails to continuously undertake the defense or settlement of such claim or if the Contractor and Customer mutually agree that the Customer is best suited to undertake the defense or settlement, the Customer will have the right, but not the obligation, to undertake the defense or settlement of such claim, at its discretion. The Contractor shall be bound by any defense or settlement the Customer may make as to such claim, and the Contractor agrees to reimburse the Customer for the expense, including reasonable attorney’s fees and costs at both the trial and appellate levels associated with any defense or settlement that the Customer may undertake to defend Contractor’s Confidential Information. The Customer will also be entitled to join the Contractor in any third-party claim for the purpose of enforcing any right of indemnity under this section.

If at any point the Customer is reasonably advised by its counsel that disclosure of the Confidential Information is required by law, including but not limited to Florida’s public records laws, the Customer may disclose such Confidential Information without liability hereunder.

- c. Public Records Requirements Pursuant to Section 119.0701, F.S. Solely for the purpose of this section, the Customer’s Contract Manager is the agency custodian of public records. If, under the Contract, the Contractor is providing services and is acting on behalf of the public agency, as provided in section 119.0701, F.S., the Contractor shall:
 - i. Keep and maintain public records required by the Customer to perform the service.
 - ii. Upon request from the Customer’s custodian of public records, provide the Customer 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.
 - iii. 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 Customer.

- iv. Upon completion of the Contract, transfer, at no cost, to the Customer all public records in possession of the Contractor or keep and maintain public records required by the Customer to perform the service. If the Contractor transfers all public records to the Customer 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 Customer, upon request from the Customer's custodian of public records, in a format that is compatible with the information technology systems of the Customer.
- v. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., 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.**

- d. Advertising. Unless legally obligated, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including mentioning the Contract in a press release or other promotional material, identifying the Customer or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the Customer or the State in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual entities eligible to make purchases pursuant to section 12, below, or authorized distributors, dealers, resellers, or service representatives.

11. Security and Confidentiality. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its employees, subcontractors, or agents in the course of performing Contract work, including security procedures, business operations information, or commercial proprietary information in the possession of the Customer or State. The Contractor will 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 Customer's or State's confidential information, or material that is otherwise obtainable under State law as a public record. To ensure confidentiality, the Contractor shall take appropriate steps as to its employees, subcontractors, and agents.

12. Cooperative Purchasing. Pursuant to their own governing laws, and subject to the Contractor's agreement, other entities may be permitted to make purchases at the terms and conditions contained herein. Such purchases are independent of this Contract, and the Customer will not be a party to any transaction between the Contractor and any other purchaser.

State agencies wishing to make purchases off this Contract must follow the provisions of sections 287.042 and 287.057(3)(b), F.S., which may require prior approval of the Department of Management Services.

EXHIBIT 2
FLORIDA DEPARTMENT OF LAW ENFORCEMENT
PROVISIONS FOR INFORMATION TECHNOLOGY
CONTRACTS

The following provisions added to, or deleted from, the contract shall be included as a part of the attached contract and shall be controlling notwithstanding any other provision of the contract.

Contracting Party, as used herein, includes one or more parties, and means contractor, consultant, licensor, or other party contracting or entering into an agreement with the Florida Department of Law Enforcement (hereinafter "the Department" or "FDLE") as the case may be.

Contents

1. Confidential Information
2. Security Requirements
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6. Federal Grants
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9. Performance Bond
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11. FDLE Special Conditions

1. Confidential Information

Take such action as may be necessary, or as the Department may specify, to protect and preserve any property or data related to this contract which is in the possession of the contractor(s) and in which the Department has or may acquire an interest.

Upon the effective date of termination of the Agreement, the Contractor shall transfer, assign, and make available to FDLE all property, materials, and data belonging to the Department, all rights and claims to any and all reservations, contracts and arrangements with subcontractors, or others, and shall make available to the Department all written information regarding the performance of the Agreement. Any data transferred shall be in a format specified by the Department. No extra compensation will be paid to the Contractor for its services in

connection with such transfer or assignment. The Department concurrently with such transfer or assignment reserves the option to assume the obligations of the Contractor if any, on all non-cancelable contracts with third parties.

2. Security Requirements

The CONTRACTOR agrees to adhere to FDLE policies and procedures, State of Florida information security laws and rules, and FBI CJIS Security Policy. FDLE's Information Systems Security Addendum (**Appendix A**) and FBI's CJIS Security Addendum (**Appendix B**) provide more specific information security requirements for CONTRACTOR staff.

3. Best Pricing

During the Contract term, if the Contractor sells substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, at a lower price, then at the discretion of the Department the price under the Contract shall be immediately reduced to the lower price.

4. Commercial Software Licenses

To enhance cost efficiencies for FDLE and comply with applicable state tax regulations, any Commercial Software Products will be licensed directly to FDLE (as the named licensee) by the applicable Commercial Software Products vendor listed in the SOW. CONTRACTOR will provide to FDLE the Commercial Software Products via agreements with the Commercial Software Product vendors and provide, directly or through an approved subcontractor, the Services to integrate the Commercial Software Products within the Project's System, as described in the SOW. FDLE has entered or will enter into separate software licensing agreements (each an End User License Agreement ("EULA")) with each of the software vendors specified in this SOW and will be responsible for compliance with the EULAs by FDLE. The Parties acknowledge and agree that the licensing of any COTS Products will be governed by the terms of the EULAs as described in _____.

5. Documentation in Escrow (if applicable)

The Contractor agrees to keep and maintain current one

copy of the Licensed Program source code with an escrow agent approved by the Department. The source code shall be maintained in a secure location.

The Contractor represents and warrants that the source code is and shall be understandable and useable by a trained computer-programming \contractor who is generally familiar with the programming language(s) used to produce the Licensed Program. Contractor further represents and warrants that the licensed software programs do not involve any proprietary languages or programming components that such a contractor could not reasonably be expected to understand, except to the extent the source code contains sufficient commentary to enable such contractor to understand and use such languages or components. Contractor further represents and warrants that the Source Code includes all of the devices, programming, and documentation necessary for the maintenance of the Licensed Program by the Department upon release of the source code pursuant to this Agreement, except for devices, programming, and documentation commercially available to the licensee on reasonable terms through readily known sources other than the Contractor.

The Contractor agrees that the Department may access, and the escrow agent may release the source code and Supporting Documentation, which has been brought up to date continuously, upon the occurrence of any of the following events (nonexclusive list):

- Inability of the Contractor to provide maintenance under this Contract.
- The Contractor declares bankruptcy or ceases to do business.

The Contractor will maintain current one copy of Supporting Documentation which is required for the proper maintenance of the licensed software with the escrow agent. Such documentation will consist of Coding Instructions, Installation Instructions, and Maintenance and Technical Support manuals, and will be the same as that which the Contractor supplies to its technical personnel to maintain the licensed software.

Upon taking possession thereof, the Department agrees that all information disclosed to the Department by the Contractor will be held in confidence and will be used only in performance or maintenance of the Licensed Programs. The Department shall exercise the same standard of care

to protect such information as is used to protect its own proprietary data.

6. Federal Grants (if applicable)

If applicable, the obligation of the FDLE to make payments under this Agreement may be contingent upon the availability of federal grant funds. FDLE and CONTRACTOR anticipate that payment for complete performance of this Agreement may require renewal (extension) of currently available Grants. Therefore, FDLE will apply for six-month extensions of the applicable Grants as soon as such applications may be submitted under Federal rules and policies, but in no event earlier than ninety (90) days prior to the expiration of the applicable Grants. Acknowledging that FDLE will use its best efforts to assure that adequate funding is available for the payments due CONTRACTOR upon acceptance of Deliverables, CONTRACTOR agrees that it will not look to a funding source other than the applicable Grants for payment under this Agreement. FDLE will, within five (5) business days, notify CONTRACTOR if it learns that applicable Grants will in fact not be sufficient to pay all amounts owed and expected to be owed under the Agreement. Upon such notification, FDLE will cooperate with CONTRACTOR to ensure that no Deliverables for which payment cannot be made are forthcoming and will issue a Stop Work Order unless otherwise agreed by the Parties. In such event, FDLE will nonetheless use best efforts to ensure CONTRACTOR is paid for unpaid Services and COTS Products provided by CONTRACTOR and accepted by FDLE in accordance with the SOW. Notwithstanding the foregoing, CONTRACTOR agrees that FDLE will not be liable to CONTRACTOR for any claim or action arising under or in connection with CONTRACTOR's products and services provided under this Agreement in an amount in excess of FDLE's available grant funding.

7. Key Personnel

Key personnel, including but not limited to the Project Manager, will be CONTRACTOR employees (i.e., not independent contractors or sub-contractor personnel) unless approved in writing by FDLE. Key personnel will be identified in the SOW. During the term of this

Agreement, CONTRACTOR will not reassign Key Personnel assigned to this Agreement to another customer without the express written consent of FDLE. Turnover of CONTRACTOR staff, including subcontractors, will not obligate FDLE to pay additional cost or accommodate schedule delays.

8. Off-Shore Contracting

CONTRACTOR is expressly prohibited from using or subcontracting facilities, services, or personnel outside of the United States in performing the work defined in this Agreement.

9. Performance Bond (if applicable)

Contractor shall furnish FDLE with a Performance Bond equal to \$_____. The Bond must be written by a Surety Company authorized to do business in the State of Florida and signed by a Florida Licensed Resident Agent.

The cost of the Performance Bond shall be borne by the Contractor. The Bond shall be accompanied by a duly authenticated or certified document, in duplicate, evidencing that the person executing the Bond on behalf of the Surety is a licensed Florida agent for the bonding company.

The Contractor shall deliver the Performance Bond to the FDLE within ten (10) working days after this Contract is signed into effect. The FDLE will return the Contractor's Performance Bond within thirty (30) consecutive calendar days following the FDLE's acceptance of all deliverables and/or services that are to be obtained under this Contract.

Contractor's failure to completely and satisfactorily perform to the technical specifications and under the terms and conditions of this Contract shall afford the FDLE the right to declare forfeiture of the performance bond issued to the FDLE.

10. 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 State of Florida 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 \$_____ per violation, with a total cap of \$_____ 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 offshore 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 State of Florida 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, and (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) minute 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 and, in all events, within one (1) business day.

Upon execution of this Contract, the CONTRACTOR shall execute an Affidavit of No Offshoring. The Affidavit of No Offshoring must be maintained throughout the Contract term and any renewals or extensions.

11. FDLE Special Conditions

Any additional conditions required with this contract or changes to FDLE Exhibit 2 will require approval by FDLE General Counsel.

Vendor: _____

Florida Department of Law Enforcement

Name: _____

Name: _____

Title: _____

Title: _____

Signature: _____

Signature: _____

Date: _____

Date: _____