Invitation to Negotiate (ITN) to Acquire

E-Discovery Software Solution and Implementation

for



Jacksonville, FL
Solicitation #98995

Optional Pre-Response Meeting Teleconference on March 17 2020 at 9:00 a.m. EST

Dial In: 866-907-1051
Passcode: 911809

Response Due Date: March 20, 2020
Response Due Time: 12:00 PM EST

Response Emailed To:
Nickolas Dambrose At
dambnc@jea.com

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1. INTENT TO NEGOTIATE

1.1. INVITATION

1.1.1. SCOPE OF WORK (ITN)

The purpose of this Invitation to Negotiate (the "ITN") is to evaluate and select a vendor that can provide a software solution to enable JEA to more quickly, effectively, and efficiently process emails taken from Microsoft Exchange Journal in response to public records requests.

JEA's expected benefits include but are not limited to:

- Ability to unenvelope emails
- Enables in-place redactions
- Flag potentially confidential or exempt information
- Search attachments
- Search by attachment existence or by attachment type
- Ability to export selected emails and attachments in Adobe PDF format
- Ability to provide a secure URL (link) for output distribution
- Search, find, and flag needing redaction based upon criteria given

More requirements of the software solution are provided in Appendix A – Business Requirements

1.1.2. BACKGROUND

JEA owns, operates and manages the electric system established by the City of Jacksonville, Florida in 1895. In June 1997, JEA also assumed operation of the water and sewer system previously managed by the City. JEA is located in Jacksonville, Florida, where we proudly serve an estimated 470,000 electric, 351,000 water and 274,000 sewer customers. JEA is Florida's largest community owned utility and the eighth largest municipal in the United States.

1.1.3. INVITATION TO NEGOTIATE

You are invited to submit a Response to the ITN noted below:

JEA ITN Title: E-Discovery Software Solution
JEA ITN Number: **#98995**

A complete copy of this ITN and any applicable documents can be downloaded from jea.com.

Response Due Time: 12:00 P.M. EST - ALL LATE RESPONSES FOR WHATEVER REASON WILL BE REJECTED.

Response Due Date: March 20, 2020

All Responses must reference the JEA ITN Title and Number noted above. All Responses must be made on the appropriate forms as specified within this ITN, and e-mailed to Nickolas Dambrose at **dambnc@jea.com**

After the Response Due Date, JEA will subsequently post to jea.com a listing of all the companies that submitted a Response to this ITN, and an email will be sent to all Respondents once the highest ranked Respondent is determined (the "Intent to Award").

1.1.4. QUESTIONS

All Questions must be via email to the JEA Buyer listed below at least two (2) **business** days prior to the opening date. Questions received within two (2) **business** days prior to the opening date will not be answered.

For Procurement Questions:
Buyer: NICKOLAS DAMBROSE
E-mail: DAMBNC@JEA.COM

Technical Questions:
Contact: JASEN HUTCHINSON
E-mail: HUTCJC@JEA.COM

1.1.5. OPTIONAL PRE-RESPONSE MEETING IN PERSON OR BY TELECONFERENCE

There will be an optional Pre- Response meeting associated with this Solicitation. All interested Companies are strongly encouraged to attend or call into the Pre- Response meeting. Companies will be required to sign in at the beginning of the meeting. A Company shall only sign in representing one company, unless otherwise specified by JEA. A roll call will begin for the teleconference attendees at the beginning of the meeting.

PLEASE BE AWARE DUE TO JEA SECURITY AND/OR SIGN IN PROCEDURES IT MAY TAKE UP TO FIFTEEN (15) MINUTES TO OBTAIN ACCESS TO A JEA FACILITY. PLEASE PLAN ACCORDINGLY SO AS TO ARRIVE TO THE MEETING ON TIME.

PRE-RESPONSE MEETING TIME: 9:00 AM EST
PRE-RESPONSE MEETING DATE: 866-907-1051
DIAL IN: 866-907-1051
PASSCODE: 911809

PRE-RESPONSE MEETING LOCATION: JEA CUSTOMER CENTER, BID OFFICE, 1ST FLOOR, ROOM 002, 21 WEST CHURCH STREET, JACKSONVILLE, FL 32202.

1.2. SPECIAL INSTRUCTIONS

1.2.1. MINIMUM QUALIFICATIONS

The Respondent shall meet the following Minimum Qualifications to be considered eligible to submit a Response to this ITN**. JEA reserves the right to ask for additional back up documentation or additional reference projects to confirm the Respondent meets the requirements stated below.** A Respondent not meeting all of the following criteria will have their Response rejected:

- The Respondent shall provide evidence of successful completion of one (1) similar eDiscovery Software Solution contracts within three (3) years of the Response Due Date. A similar contract is defined as being utilized to satisfy public information requests and containing similar complexity as described in this Solicitation.

A Minimum Qualification Form is provided in Appendix B of this ITN.

Please note, any Respondent whose contract with JEA was terminated for default within the last two (2) years shall have their Response rejected.

1.2.2. NUMBER OF CONTRACTS TO BE AWARDED

JEA intends to Award up to one (1) Contract(s) for the Work. JEA reserves the right to Award more than one Contract based on certain groupings of the Work items, or JEA may exclude certain Work items, if JEA determines that it is in its best interest to do so.

1.2.3. REQUIRED FORMS TO BE SUBMITTED WITH RESPONSE

The following forms should be completed and submitted to JEA at the timeframes stated herein.
The Respondent can obtain the required forms, other than the Minimum Qualification Form, Response Form and Response Workbook, by downloading them from JEA.com.

A. The following forms should be submitted with the Response email:

- Minimum Qualifications Form- This form can be found in Appendix B of this ITN
- Response Form- This can be found in Appendix B of this ITN
- Response Workbook - This can be found in Appendix B of this ITN
- Cloud, Outsourced, or Managed Services Solution Procurement Evaluation Matrix (if applicable) - This can be found in Appendix B of this ITN
- Business Requirements – This can be found in Appendix A of this ITN
- List of Subcontractors Form (if applicable) – This can be found in Appendix B of this ITN

If the above listed forms are not submitted with the Response by the Response Due Time and Date, JEA may reject the Response. In its sole discretion, JEA reserves the right to reject any and all Responses either in whole or in part, with or without cause, or to waive any ITN requirement informalities, minor irregularities, and deficiencies in any Response, and to determine such action is in the best interest of JEA.

B. JEA also requests the following documents to be submitted prior to Purchase Order issuance. Failure to submit these documents prior to Purchase Order issuance could result in JEA's rejection of the Response.

- Conflict of Interest Certificate Form - This form can be found at JEA.com
- Insurance certificate
- W-9
- Evidence of active registration with the State of Florida Division of Corporations (www.sunbiz.org)
- Non-Disclosure Agreement (NDA)
- Personnel Risk Assessment (PRA) form, Contractor Background Check Attestation
- Any technical submittals as required by the Technical Specifications

1.3. EVALUATION METHODOLOGY

1.3.1. BASIS OF AWARD - HIGHEST EVALUATED

JEA will Award Contracts to the responsive and responsible Respondents whose Responses meets or exceeds the Minimum Qualifications set forth in this Solicitation, and whose Responses receives the highest number of points for the Selection Criteria stated herein.

1.3.2. EVALUATION AND NEGOTIATION PROCESS

JEA intends to select up to four (4) Respondents (the "Short-list") with which to commence negotiations. The JEA Buyer will review, evaluate, and rank each Response submitted. Or a selection committee (the "Selection Committee") will be appointed by the Chief Procurement Officer (the "CPO"), or his designee, review, evaluate, and rank each Response submitted. JEA will use this ranking to develop the Short-list of companies in which to proceed with negotiations.

Prior to developing the Short-list, JEA may request that the Respondents provide additional information or additional project references to clarify their Response and make an accurate assessment in developing the Short-list. JEA must be satisfied that the successful Respondent has the necessary technical expertise, experience, and resource capabilities to satisfactorily perform the Work described in this ITN.

JEA reserves the right to Award a Purchase Order based on the JEA Buyer's initial evaluation of the Responses if the Buyer deems the Responses demonstrate adequate competition, compliance, and responsiveness to this ITN. If JEA determines the previously stated criteria have not been met, JEA will finalize the Short-list and proceed with negotiations.

Respondents are cautioned to present the best possible pricing offer in their initial Responses. **Failing to do so may result in a Respondent not making the Short-list, and will not be allowed to proceed with Purchase Order negotiations. Additionally, the Total Purchase Order Price submitted with the initial Response cannot be increased during the ITN process.**

Once a Short-list is developed, the Buyer, or if determined necessary, the CPO, or his designee, will appoint a negotiating team (the "Negotiating Team"). The Negotiation Team may be comprised of the same individuals as were members of the Selection Committee. JEA reserves the right to negotiate concurrently or separately with the Short-list Respondents. JEA reserves the right to seek clarifications, to request Response revisions, and to request any additional information deemed necessary for proper evaluation of the Responses. JEA reserves the right to incorporate value added services or industry standard innovations recommended by a Respondent into the Purchase Order's scope of work.

A Respondent that is included on the Short-list may be required, at the sole option of JEA, to make an oral presentation, provide additional written clarifications to its Response, or JEA may require site visits to Respondent's facilities. Oral presentations, hand-outs, and written clarifications will be attached to the Respondent's Response and will become a part of the Response as if originally submitted. The CPO or his designee will initiate and schedule a time and location for any presentations which may be required.

As a part of the negotiation process, JEA may contact the references provided by the Respondent for the purpose of independently verifying the information provided in the Response, and to assess the extent of success of the projects associated with those references. JEA also reserves the right to contact references not provided by Respondents. Respondents may be requested to provide additional references. The results of the reference checking may influence the final negotiation, ranking, and Award recommendation.

After written clarifications, oral presentations, site visits, and any other negotiations deemed by JEA to be in its best interest, the Short-list Respondents will be given a deadline to submit their best and final offer (the "Best and Final Offer" or "BAFO"). The negotiation process will stop upon submission of the BAFO. Respondents will not be allowed to make further adjustments to their BAFO or communicate further with JEA, except to respond to requests for clarification from the Negotiating Team.

The JEA Buyer or the Negotiating Team will adjust and calculate the final rankings of the Short-list based on the BAFO submissions. JEA does not anticipate reopening negotiations after receiving the BAFOs, but reserves the right to do so if it believes doing so will be in the best interests of JEA. In the event that JEA reopens negotiations, any final rankings will be revised accordingly.

Negotiations will not be open to the public, but will be recorded. All recordings of negotiations and any records, documents, and other materials presented at negotiation sessions are public records and can be released pursuant to a public records request after a notice of intended decision for this ITN is posted, or thirty (30) days after the opening of the Responses, whichever occurs earlier.

The Award recommendation of the Buyer or Negotiating Team will be based upon the scoring of the BAFOs and the Selection Criteria described below in this ITN. The Respondent with the highest score will be submitted to the CPO for approval. Once approved, the JEA Buyer will issue the highest ranked Respondent a Purchase Order for the Work.

In its sole discretion, JEA reserves the right to withdraw this ITN either before or after receiving Responses, to reject any and all Responses either in whole or in part, with or without cause, or to waive any ITN requirement informalities, minor irregularities, and deficiencies in any Response, and to determine such action is in the best interest of JEA. Issuance of this ITN in no way constitutes a commitment by JEA to make an Award or enter into a Purchase Order.

All Responses submitted to JEA are subject to the JEA's terms and conditions contained in this ITN and JEA's Procurement Code. Any and all additional terms and conditions submitted by Respondents are rejected and shall have no force.

1.3.3. ALTERNATE PROVISIONS AND CONDITIONS

Responses that contain provisions that are contrary to requirements found on this ITN, including, but not limited to, the Purchase Order terms and conditions contained in Section 2 of this ITN, and any requirements found in the Technical Specifications attached as Appendix A to this ITN, will be reviewed but may not be accepted by JEA. However, as this is an ITN, JEA reserves the right to negotiate the best terms and conditions if determined to be in the best interests of JEA, and negotiate different terms and related price adjustments if JEA determines that it provides the best value to JEA.

1.3.4. INSURANCE REQUIREMENTS

Prior to JEA issuing a Purchase Order to the Respondent to begin the Work or Services, the Respondent shall submit a certificate of insurance (COI) that is in compliance with amounts and requirements as indicated in the Section 2 below, titled "Insurance Requirements". **Note that the COI shall specifically indicate JEA as an additional insured on all required insurance except Worker's Compensation . Furthermore, waiver of subrogation shall be provided for all required insurance in favor of JEA, including its board members, officers, employees, agents, successors, and assigns.**

1.4. SELECTION CRITERIA

1.4.1. SELECTION CRITERIA (ITN)

The criteria listed will be used by JEA to evaluate and rank the qualified Respondents to determine which Respondents are selected for the Short-list who will then move on to the Purchase Order negotiation phase of this ITN. Details concerning how each Selection Criteria is calculated can be found in the Selection Criteria below and on the Evaluation Matrix for this ITN.

1.4.2. QUOTATION OF RATES

Maximum score for criterion is: 50 Points
Respondent shall provide a firm-fixed price quote for all Work in this ITN by completing the enclosed Appendix B - Response Workbook The prices shall include all profit, taxes, benefits, travel, and all other overhead items.

Please note, the prices quoted by Respondent on the Response Form must be firm-fixed prices, not estimates.

1.4.3. ABILITY TO MEET THE BUSINESS REQUIREMENTS:

Maximum score for criterion is: 50 Points
Respondent shall complete the attached Appendix A – Business Requirements that details the functionality requirements of the proposed Solution.

JEA shall use its expertise to evaluate each Response to the requirements contained in Appendix A – Business Requirements. This document includes the requirements that have been identified by JEA as important to its selection as a qualified Bidder.

1.4.4. TIE

In the event of a tie score, the tie shall be resolved in accordance with JEA's Procurement Code and Operational Procedures.

1.5. GENERAL INSTRUCTIONS

1.5.1. SUBMITTING THE RESPONSE

The Respondent shall submit all required forms as specified via email to Nickolas Dambrose at dambnc@jea.com **IF RESPONDENT IS INTERESTED IN RECEIVING A RESPONSE FORM IN A WORD FORMAT, PLEASE EMAIL THE BUYER WITH THE REQUEST. REQUESTS MUST BE MADE NO LATER THAN FIVE (5) BUSINESS DAYS BEFORE RESPONSE OPENING.**

1.5.2. ADDENDA

JEA may issue Addenda prior to the opening of Responses to change or clarify the intent of this Invitation to Negotiate (ITN). The Respondent shall be responsible for ensuring it has received all Addenda prior to submitting its Response and shall acknowledge receipt of all Addenda by completing the Confirmation of Receipt of ITN Addenda. JEA will post Addenda when issued online at JEA.com. Companies must obtain Addenda from the JEA.com website. All Addenda will become part of the ITN and any resulting Purchase Orders. It is the responsibility of each Respondent to ensure it has received and incorporated all Addenda into its Response. Failure to acknowledge receipt of Addenda may be grounds for rejection of a Response at JEA's sole discretion.

1.5.3. PURCHASE ORDER ISSUANCE AND START OF WORK

Within thirty (30) days from the date of Award, JEA will present the successful Respondent with a Purchase Order. Unless expressly waived by JEA, the successful Respondent shall provide the Services within ten (10) days after receiving the Purchase Order from JEA. If the Respondent fails to act on a JEA-issued Purchase Order (PO), JEA may cancel the Award with no further liability to the Respondent, retain the bid security or bond (if applicable), and Award to the next-ranked company. **The Purchase Order shall service as Company's notice to proceed with the Services.**

1.5.4. DEFINED TERMS

Words and terms defined in the Section entitled "Definitions" of this document are hereby incorporated by reference into the entire document.

1.5.5. EX PARTE COMMUNICATION

Ex Parte Communication is defined as any inappropriate communication concerning an ITN between a company submitting a Response and a JEA representative during the time in which the ITN is being advertised through the time of Award. Examples of inappropriate communications include: private communications concerning the details of the ITN in which a company becomes privy to information not available to the other Respondents. Social contact between companies and JEA Representatives should be kept to an absolute minimum during the ITN process.

Ex Parte Communication is strictly prohibited. Failure to adhere to this policy will disqualify the noncompliant company's Response. Any questions or clarifications concerning this ITN must be sent in writing via email to the JEA Buyer at least five (5) business days prior to the opening date. If determined by JEA, that a question should be answered or an issue clarified, JEA will issue an addendum to all Respondents.

1.5.6. CERTIFICATION AND REPRESENTATIONS OF THE COMPANY

By signing and submitting the Response Form, the Respondent certifies and represents as follows:

A. That the individual signing the Response Form is a duly authorized agent or officer of the Respondent. Responses submitted by a corporation must be executed in the corporate name by the President or Vice President. If an individual other than the President or Vice President signs the Response Form, satisfactory evidence of authority to sign must be submitted upon request by JEA. If the Response is submitted by a partnership, the Response Form must be signed by a partner whose title must be listed under the signature. If an individual other than a partner signs the Response Form, satisfactory evidence of authority to sign must be submitted upon request by JEA.

B. That every aspect of the Response and the detailed schedule for the execution of the Work, are based on its own knowledge and judgment of the conditions and hazards involved, and not upon any representation of JEA. JEA assumes no responsibility for any understanding or representation made by any of its representatives during or prior to execution of the Purchase Order unless such understandings or representations are expressly stated in the Purchase Order expressly provides that JEA assumes the responsibility.

C. The corporation or partnership must be in active status at the Florida Division of Corporations (www.sunbiz.org) prior to any subsequent award of Purchase Order.

D. That the Respondent maintains in active status any and all licenses, permits, certifications, insurance, bonds and other credentials including, but not limited to, contractor's license and occupational licenses necessary to perform the Services. The Respondent also certifies that, upon the prospect of any change in the status of applicable licenses, permits, certifications, insurances, bonds or other credentials, the Respondent shall immediately notify JEA of status change.

E. That the Respondent has read, understands and will comply with the Section titled Ethics.

1.5.7. ETHICS

By submitting a Response, the Respondent certifies this Response is made without any previous understanding, agreement or connection with any other person, firm, or corporation submitting a Response for the same Work other than as a Subcontractor or supplier, and that this Response is made without outside control, collusion, fraud, or other illegal or unethical actions. The Respondent shall comply with all JEA and City of Jacksonville ordinances, policies and procedures regarding business ethics.

The Respondent shall submit only one Response in response to this Solicitation. If JEA has reasonable cause to believe the Respondent has submitted more than one Response for the same Services, other than as a Subcontractor or subsupplier, JEA shall disqualify the Bid and may pursue debarment actions.

The Respondent shall disclose the name(s) of any public officials who have any financial position, directly or indirectly, with this Response by completing and submitting the Conflict of Interest Certificate Form found at jea.com. If JEA has reason to believe that collusion exists among the Respondents, JEA shall reject any and all Responses from the suspected Respondent s and will proceed to debar Respondent from future JEA Awards in accordance with the JEA Procurement Code.

JEA is prohibited by its Charter from awarding contracts to JEA officers or employees, or in which a JEA officer or employee has a financial interest. JEA shall reject any and all Responses from JEA officers or employees, as well as, any and all Responses in which a JEA officer or employee has a financial interest.

In accordance with Florida Statutes Sec. 287.133, JEA shall reject Responses from any persons or affiliates convicted of a public entity crime as listed on the Convicted Vendor list maintained by the Florida Department of Management Services. JEA shall not make an Award to any officer, director, executive, partner, shareholder, employee, member, or agent active in management of the Respondent listed on the Convicted Vendor list for any transaction exceeding $35,000 for a period of 36 months from the date of being placed on the Convicted Vendor list.

If the Respondent violates any requirement of this clause, the Response may be rejected and JEA may debar offending companies and persons.

1.5.8. JEA PUBLICATIONS

Applicable JEA publications are available at jea.com.

1.5.9. MATHEMATICAL ERRORS

In the event of a mathematical error in calculation of the prices entered on the Response, the Unit Prices will prevail. The corrected Response Price utilizing the Unit Prices will be used to determine if the Company is awarded the Services. Subsequently, the Unit Prices will be used throughout the term of the Purchase Order.

1.5.10. MODIFICATION OR WITHDRAWAL OF RESPONSES

The Respondent may modify or withdraw its Response at any time prior to the Response Due Date and Time by giving written notice to JEA's Chief Procurement Officer. JEA will not accept modifications submitted by telephone, telegraph, email, or facsimile, or those submitted after Response Due Date and Time. The Respondent shall not modify or withdraw its Response from time submitted and for a period of 90 days following the opening of Responses.

1.5.11. PROHIBITION AGAINST CONTINGENT FEES

The Respondent warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Respondent, or an independent sales representative under contract to the Respondent, to solicit or secure a contract with JEA, and that it has not paid or agreed to pay any person, company, corporation, individual or Respondent, other than a bona fide employee working solely for the Respondent, or an independent sale representative under contract to the Respondent, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the Award or obtaining a Purchase Order or Contract. For a breach or violation of these provisions occurs, JEA shall have the right to terminate the Purchase Order without liability, and at its discretion, to deduct from the Purchase Order Price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

1.5.12. PROTEST OF ITN AND AWARD PROCESS

Respondents shall file any protests regarding this ITN in writing, in accordance with the JEA Purchasing Code, as amended. Copies of the JEA Purchasing Code are available online at www.jea.com.

1.5.13. RESERVATION OF RIGHTS TO JEA

This ITN provides potential companies with information to enable the submission of written offers. This ITN is not a contractual offer or commitment by JEA to purchase products or services.

Responses shall be good for a period of ninety (90) days following the opening of the Responses.

JEA reserves the right to reject any or all Responses, or any part thereof, and/or to waive informalities if such action is in its best interest. JEA may reject any Responses that it deems incomplete, obscure or irregular including, but not limited to, Responses that omit a price on any one or more items for which prices are required, Responses that omit Unit Prices if Unit Prices are required, Responses for which JEA determines that the Response is unbalanced, Responses that offer equal items when the option to do so has not been stated, Responses that fail to include a Bid Bond, where one is required, and Responses from Companies who have previously failed to satisfactorily complete JEA contracts of any nature or who have been scored by JEA as "Unacceptable" and as a result, are temporarily barred from bidding additional work.

JEA reserves the right to cancel, postpone, modify, reissue and amend this ITN at its discretion.

JEA reserves the right to cancel or change the date and time announced for opening of Responses at any time prior to the time announced for the opening of Responses. JEA may award the Purchase Order in whole or in part. In such cases whenever JEA exercises any of these reservations, JEA will make a commercially reasonable effort to notify, in writing, all parties to whom ITNs were issued. JEA may award multiple or split Purchase Orders if it is deemed to be in JEA's best interest.

1.5.14. SUNSHINE LAW

GENERAL

Article I, Section 24, Florida Constitution, guarantees every person access to all public records and Chapter 119, Florida Statutes, provides a broad definition of public records. JEA is a body politic and corporate and subject to these laws and related statutes ("Florida's Public Records Laws"). **All Responses and subsequent Contracts or Purchase Orders issued pursuant to this ITN are public record and available for public inspection unless specifically exempt by law.**

Redacted Submissions: If a Respondent believe that any portion of the documents, data or records submitted in response to this ITN are exempt from Florida's Public Records Law, Respondent must (1) clearly segregate and mark the specific sections of the document, data or records as "Confidential," (2) cite the specific Florida Statute or other legal authority for the asserted exemption, and (3) provide JEA with a separate redacted copy of its response (the "Redacted Copy"). The cover of the Redacted Copy shall contain JEA's title and number for this ITN and Respondent's name, and shall be clearly labeled "Redacted Copy." Respondent should only redact those portions of records that Respondent claims are specifically exempt from the Florida Public Records Laws. If Respondent fails to submit a redacted copy of information it claims is confidential, JEA is authorized to produce all documents, data and other records submitted to JEA in answer to a public records request for such information.

In the event of a request for public records to which documents that are marked as confidential are responsive, JEA will provide the Redacted Copy to the requestor. If a requestor asserts a right to any redacted information, JEA will notify Respondent that such an assertion has been made. It is Respondent's responsibility to respond to the requestor

to assert that the information in question is exempt from disclosure under applicable law. If JEA becomes subject to a demand for discovery or disclosure of Respondent's redacted information under legal process. JEA shall give Respondent prompt notice of the demand prior to releasing the information (unless otherwise prohibited by applicable law.) Respondent shall be responsible for defending its determination that the redacted portions of its response are not subject to disclosure.

By submitting a response to this ITN, Respondent agrees to protect, defend, and indemnify JEA from and against all claims, demands, actions, suits, damages, losses, settlements, costs and expenses (including but not limited to reasonable attorney fees and costs) arising from it relating to Respondent's determination that the redacted portions of its response to this Solicitation are not subject to disclosure.

IF THE RESPONDENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE RESPONDENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS SOLICITATION, CONTACT THE JEA CUSTODIAN OF PUBLIC RECORDS AT: Public Records Request Coordinator, JEA, 21 West Church Street, T-8, Jacksonville, FL 32202, Ph: 904-665-8606, publicrecords@jea.com.

1.6. JACKSONVILLE SMALL AND EMERGING BUSINESS (JSEB) PROGRAM REQUIREMENTS

1.6.1.1. OPTIONAL USE OF JACKSONVILLE SMALL AND EMERGING BUSINESS (JSEB) PROGRAM

It is at the Company's option as to whether it chooses to subcontract to a JSEB firm. JEA encourages the use of JSEB qualified firms; however, the Company is not required to utilize JSEB firms to be awarded this Contract.

JSEB firms that qualify for this Contract are only those shown on the current City of Jacksonville JSEB directory appearing at www.COJ.net. Certification of JSEB firms must come from the City of Jacksonville. No other agency or organization is recognized for purposes of this Contract.

In no case shall the Company make changes to the JSEB firms listed in its Bid, revise the JSEB Scope of Work or amount of Work as stated in its Bid without prior written notice to the JEA Contract Administrator, and without subsequent receipt of written approval for the JEA Contract Administrator.

Any subcontractors of Company shall procure and maintain the insurance required of Company hereunder during the life of the subcontracts. Subcontractors' insurance may either be by separate coverage or by endorsement under insurance provided by Company. Note: Any JSEB firms identified by Bidders for this Solicitation are considered "Subcontractors" under the direct supervision of the Prime or General Contractor (herein referred to as Company in this Solicitation). Companies should show good faith efforts in providing assistance to JSEB firms in the securing of Subcontractors' insurance requirements stated in this section. Company shall submit subcontractors' Certificates of Insurance to JEA prior to allowing subcontractors to perform Work on JEA's job sites. All questions and correspondence concerning the JSEB program should be address to: Rita Scott, JSEB Manager, JEA, scotrl@jea.com.

2. CONTRACTUAL TERMS AND CONDITIONS

Provided below are the contractual terms and conditions that will be incorporated by reference in the Purchase Order issued and executed by JEA. The Purchase Order will incorporate by reference the terms contained in the Solicitation portion of this document provided in Section 1, the contractual terms provided in Section 2; and the Technical Specifications provided in Section 3.

2.1. DEFINITIONS

2.1.1. DEFINITIONS

Words and terms defined in this section shall have the same meaning throughout all parts of this Solicitation, Purchase Order (also referred to herein as the “Contract”). Where intended to convey the meaning consistent with that set forth in its definition, a defined word or term is marked by initial capitalization. The "Technical Specifications" portion of this Solicitation may define additional words and terms where necessary to clarify the Work or Services. Unless otherwise stated in this Solicitation and/or Purchase Order or Contract, definitions set forth in the "Technical Specifications" shall apply only within the "Technical Specifications."

2.1.2. ACCEPTANCE

JEA's written notice by the JEA Representative to the Company that all Services as specified in the Purchase Order/Contract, or a portion of the Services as specified in a Task or Work Order, has been completed to JEA's satisfaction. Approval or recognition of the Company meeting a Milestone or interim step does not constitute Acceptance of that portion of Services. Acceptance does not in any way limit JEA's rights under the Contract or applicable laws, rules and regulations.

2.1.3. ADDENDUM/ADDENDA

A written change or changes to the Solicitation which is issued by JEA Procurement Services and is incorporated into the Solicitation as a modification, revision and/or further clarification of the intent of the Solicitation.

2.1.4. ANNIVERSARY DATE

The date which is twelve (12) months after the effective date of the Contract, and each date which is twelve (12) months after an Anniversary Date that occurs while the Contract is in effect.

2.1.5. AWARD

The written approval of the JEA Awards Committee that the procurement process for the purchase of the Services was in accordance with the JEA Procurement Code and Florida Statutes. Once an Award is approved, JEA will either issue a Purchase Order or execute a Contract with the successful bidder or Respondent.

2.1.6. CONTRACT

An agreement between JEA and the Company, signed by both parties, which incorporates all the contract documents (the “Contract Documents”). The Contract shall not be altered without an Amendment to the Contract and executed by JEA and the Company, or a JEA issued Change Order.

2.1.7. CONTRACT AMENDMENT

A written document signed by JEA and the Company issued after the execution of the original Contract which authorizes an addition, deletion or revision of the Services, or an adjustment in the Contract Price or the Term of the Contract. Contract Amendments do not authorize expenditures greater than the monies encumbered by JEA, which is stated on the associated Purchase Order(s). An executed Contract Amendment resolves all issues related to the Contract Price and the Term of the Contract.

2.1.8. CONTRACT DOCUMENTS

Contract Documents, also referred to as the "Contract" means the executed Contract, all Solicitation documents and Response Documents as further described in the Section of the Solicitation titled "Contract Documents", and any written Change Orders, amendments or Purchase Orders executed by JEA, and insurance and/or bonds as required by the Contract.

2.1.9. CONTRACT PRICE

The total amount payable to the Company during the initial Term of the Contract. However, this amount is not a guaranteed amount. Also referred to as the "Maximum Indebtedness" of JEA.

2.1.10. DEFECT

Services that fails to reach Acceptance, or Services that fails meet the requirements of any required test, inspection or approval, and any Services that meets the requirements of any test or approval, but nevertheless does not meet the requirements of the Contract.

2.1.11. HOLIDAYS

The following days: New Year's Day, Martin Luther King Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve Day, and Christmas Day. If any of these Holidays fall on a weekend, JEA may observe a holiday on the nearest weekday.

2.1.12. INVITATION TO NEGOTIATE

The document (which may be electronic) issued by the JEA Procurement Services to solicit Responses from companies that include, but not limited to, the Minimum Qualifications Form, samples of contract documents and addenda. Also referred to as "Solicitation".

2.1.13. INVOICE

A document seeking payment to the Company from JEA for all or a portion of the Services, in accordance with the Contract Documents, and including at a minimum the following items: the Company's name and address, a description of the product(s) or service(s) rendered, a valid JEA PO number, the amount payable, the Unit Price, the payee name and address, any associated JSEB forms and any other supporting documentation required by the Contract Documents.

2.1.14. JEA

JEA on its own behalf.

2.1.15. JEA REPRESENTATIVE

The person assigned by JEA to administer the Contract.

2.1.16. PURCHASE ORDER (PO)

A commercial document issued by JEA, authorizing work, indicating types, quantities, and agreed prices for products or services the Company will provide to JEA. Sending a PO to a Company constitutes a legal offer to buy products or services. The words "Purchase Order" are clearly marked across the top, a PO number is used for reference and invoicing purposes, includes an authorized JEA signature, and states the dollar amount of the lawfully appropriated funds. (Also referred to herein as the “Contract”)

2.1.17. RESPONSE

The document describing the company's offer submitted in response to this ITN.

2.1.18. RESPONDENT

The respondent to this Solicitation.

2.1.19. SUBCONTRACTOR

The legal person, firm, corporation or any other entity or business relationship that provides a portion of the work, or provides supplies and materials, to the Company which has an executed Contract with JEA. JEA is not in privity of contract with the Subcontractor.

2.1.20. SOLICITATION

The documents (which may be electronic) issued by JEA's Procurement Services to solicit Responses from Respondents that includes, but is not limited to, the Response Documents, Response Workbook, samples of documents, contractual terms and conditions, the Technical Specifications, and associated Addenda.

2.1.21. TASK ORDER

A document that describes the Services or describes a series of tasks that the Company will perform in accordance with the Purchase Order.

2.1.22. TERM

The period of time during which the Contract is in effect.

2.1.23. UNIT PRICES

The charges to JEA for the performance of each respective unit of Work as stated in the Response Workbook, Bid Form, or Response Form, and incorporated into the Contract.

2.2. CONTRACT DOCUMENTS

2.2.1. ORDER OF PRECEDENCE

The Contract shall consist of JEA's Contract and/or Purchase Order together with the Solicitation including, but not limited to, the executed Response Documents, which shall be collectively referred to as the Contract Documents. This Contract is the complete agreement between the parties. Parol or extrinsic evidence will not be used to vary or contradict the express terms of this Contract. The Contract Documents are complementary; what is called for by one is binding as if called for by all. The Company shall inform JEA in writing of any conflict, error or discrepancy in the Contract Documents upon discovery. Should the Company proceed with the Services prior to written resolution of the error or conflict by JEA, all Services performed is at the sole risk of the Company. JEA will generally consider this precedence of the Contract Documents in resolving any conflict, error, or discrepancy:

- Contract Amendments
- Executed Contract Documents
- Exhibits to Contract Documents
- JEA Purchase Order
- Addenda to JEA ITN
- Drawings associated with this ITN
- Exhibits and Attachments to this ITN
- Technical Specifications associated with this ITN
- ITN Solicitation
- References
- Company's Response

The figure dimensions on drawings shall govern over scale dimensions. Contract and detailed drawings shall govern over general drawings. The Company shall perform any Services that may reasonably be inferred from the Contract

as being required whether or not it is specifically called for. Services, materials or equipment described in words that, so applied, have a well-known technical or trade meaning shall be taken as referring to such recognized standards.

2.3. PRICE AND PAYMENTS

2.3.1. PAYMENT METHOD

Upon Company's completion of and JEA's Acceptance of the completion of each predetermined Milestone, the Company shall submit to JEA an Invoice for the amount/percentage of the Work or Services completed corresponding to that Milestone.
The Milestone payments that are associated with the Work or Services are as follows:

Appendix B - Response Workbook Item Number	Description	Milestone	% of Payment
1.1.5	Software Licenses	Contract Award	100%
1.2.2	Data Storage	Completion of Year One (1)	100%
1.3.2	Maintenace and Support	Monthly (x 12)	8.33%
1.4	Training	Upon Completion and Invoice	100%

2.3.2. DISCOUNT PRICING

JEA offers any or all of the following option payment terms, one of which may be executed at the request of the Company by sending an email to the JEA Buyer listed in this Solicitation:

- 1% 20, net 30
- 2% 10, net 30

The Company may request alternate payment terms for JEA's consideration, however, alternate payment terms are not effective until acceptance by JEA in writing. Please note, all payment dates are calculated from the date of the Invoice receipt by JEA's Accounts Payable.

2.3.3. INVOICING AND PAYMENT TERMS

The Company shall submit all Invoices in accordance with the payment method agreed upon in these Contract Documents. Invoices shall be submitted to the following email address: **ACCTPAYCUSTSRV@JEA.COM**, or if the Company does not have email capability, it can mail hard copies to: JEA Accounts Payable, P.O. Box 4910, Jacksonville, FL 32201-4910.

JEA will pay the Company the amount requested within thirty (30) calendar days after receipt of an Invoice from the Company subject to the provisions stated below.

JEA may reject any Invoice or Application for Payment within 20 calendar days after receipt. JEA will return the Invoice or Application for Payment to the Company stating the reasons for rejection.

Upon receipt of an acceptable revised Invoice or Application for Payment, JEA will pay the Respondent the revised amount within ten (10) days.

JEA may withhold payment if the Company is in violation of any conditions or terms of the Contract Documents.

In the case of early termination of the Contract, all payments made by JEA against the Contract Price prior to notice of termination shall be credited to the amount, if any, due the Company. If the parties determine that the sum of all previous payments and credits exceeds the sum due the Company, the Company shall refund the excess amount to JEA within ten (10) days of determination or written notice.

2.3.4. JSEB - INVOICING AND PAYMENT

If the Company utilizes JSEB certified firms, regardless of whether these Contract Documents require or encourage the use of such firms, the Company shall Invoice for and report the use of JSEB certified firms according to the format and guidelines established by the City of Jacksonville.

2.3.5. OFFSETS

In case the Company is in violation of any requirement of the Contract, JEA may withhold payments that may be due the Company, and may offset existing balances with any JEA incurred costs against funds due the Company under this and any other Company Contract with JEA, as a result of the violation, or other damages as allowed by the Contract Documents and applicable law.

2.3.6. TAXES

JEA is authorized to self-accrue the Florida Sales and Use Tax and is exempt from Manufacturer's Federal Excise Tax when purchasing tangible personal property for its direct consumption.

2.3.7. LIQUIDATED DAMAGES

JEA desires to ensure delivery of the service levels contained in Appendix B – Response Workbook. In order for JEA to ensure the service level is achieved by the Company, this liquidated damage provision is established for this Contract. The total dollar amount of liquidated damages that could be charged to the Company shall not exceed the percentage of the annual Maintenance and Support pricing in any calendar year.

If the Quality Criteria as defined on the Company's Response Workbook is not satisfied, then Company shall pay JEA liquidated damage the percent (%) amount of the "Total $ of Monthly Maintenance and Support Fees at Risk" as set forth on the Company's Response Workbook. The Company shall pay JEA the percent amount by the end of the subsequent calendar month, or Company can agree to have JEA offset the said amount from Company's next monthly payment from JEA.. Note, the amount of liquidated damages owed to JEA will not be adjusted for any reason, except in the instance of a Force Majeure event (as defined herein) or delay directly caused by JEA.

Notwithstanding Force Majeure events or direct delays caused by JEA, the Company agrees that it's pricing and schedule stated on its Response Workbook anticipates that delays may occur during the Term of the Contract. Further, any and all costs or impacts incurred by the Company in accelerating the Company's work to overcome or absorb such delays shall be the sole responsibility of the Company.

In the event of a Force Majeure event or a delay caused by JEA, which substantially affects the Company's operations on the Contract, the Company and JEA shall agree as to the number of calendar days to extend the completion date of the Work. In the event the Company and JEA are unable to agree on the number of calendar days to extend the Work completion date, JEA will unilaterally determine the number of calendar days to complete the Work, and the Company shall have no right whatsoever to contest such determination, except if the Company establishes that the number of calendar days determined by the JEA was arbitrary or without any reasonable basis.

The Company understands and agrees that the liquidated damages defined herein is to be paid not as a penalty, but as compensation to JEA as a fixed and reasonable liquidated damages for losses that JEA will suffer because of such default, whether through increased administrative and engineering costs, interference with JEA's normal operations, other tangible and intangible costs, or otherwise, which costs will be impossible or impractical to measure or ascertain with any reasonable specificity.

Liquidated damages may, at JEA's sole discretion, be deducted from any monies held by JEA that are otherwise payable to Company.

The Company's responsibility for liquidated damages shall in no way relieve the Company of any other obligations under the Contract.

2.4. WARRANTIES AND REPRESENTATIONS

2.4.1. WARRANTY

The Company represents and warrants that it has the full corporate right, power and authority to enter into the Contract and to perform the Services, and that the performance of its obligations and duties hereunder does not and will not violate any Contract to which the Company is a party or by which it is otherwise bound.
The Company represents and warrants that it will conduct the Services in a manner and with sufficient labor, materials and equipment necessary to affect a diligent pursuance of the Services.

The Company represents and warrants that it has the responsibility and capacity to train and supervise its employees, Subcontractors and suppliers to ensure the Services complies with all safety requirements of the Contract Documents.

The Company represents and warrants that its employees and Subcontractors shall exercise the degree of skill and care required by customarily accepted good practices and procedures.

The Company warrants that all items provided under the Contract shall be in accordance with the requirements of this Contract and services shall be performed in a professional manner and with professional diligence and skill, consistent with the prevailing standards of the industry. The Company warrants that the Services will meet the service levels, functional and performance requirements defined in the Contract.

The Company warrants all Services for a period of one (1) year following Acceptance of the Services. If any failure to meet the foregoing warranty appears within one year after Acceptance, the Company shall again perform the Services directly affected by such failure at the Company's sole expense.

2.5. INSURANCE, INDEMNITY AND RISK OF LOSS

2.5.1. INSURANCE REQUIREMENTS

Before starting and until Acceptance of the Services by JEA, and without further limiting its liability under the Contract, Company shall procure and maintain at its sole expense, insurance of the types and in the minimum amounts stated below:

Workers' Compensation

Florida Statutory coverage and Employer's Liability (including appropriate Federal Acts); Insurance Limits: Statutory Limits (Workers' Compensation) $500,000 each accident (Employer's Liability).

Commercial General Liability

Premises-Operations, Products-Completed Operations, Contractual Liability, Independent Contractors, Broad Form Property Damage, Explosion, Collapse and Underground, Hazards (XCU Coverage) as appropriate; Insurance Limits: $1,000,000 each occurrence, $2,000,000 annual aggregate for bodily injury and property damage, combined single limit.

Automobile Liability

All autos-owned, hired, or non-owned; Insurance Limits: $1,000,000 each occurrence, combined single limit.

Excess or Umbrella Liability

(This is additional coverage and limits above the following primary insurance: Employer's Liability, Commercial General Liability, and Automobile Liability); Insurance Limits: $5,000,000 each occurrence and annual aggregate.

Company's Commercial General Liability, Excess or Umbrella Liability policies shall remain in force throughout the duration of the project and until the Work is completed to JEA's satisfaction. The Indemnification provision provided herein is separate and is not limited by the type of insurance or insurance amounts stated above.

Company shall specify JEA as an additional insured for all coverage except Workers' Compensation and Employer's Liability. Such insurance shall be primary to any and all other insurance or self-insurance maintained by JEA. Company shall include a Waiver of Subrogation on all required insurance in favor of JEA, its board members, officers, employees, agents, successors and assigns.

Such insurance shall be written by a company or companies licensed to do business in the State of Florida and satisfactory to JEA. Prior to commencing any Services under this Contract, certificates evidencing the maintenance of the insurance shall be furnished to JEA for approval. Company's and its subcontractors' Certificates of Insurance shall be mailed to JEA (Attn. Procurement Services), Customer Care Center, 6th Floor, 21 West Church Street, Jacksonville, FL 32202-3139.

The insurance certificates shall provide that no material alteration or cancellation, including expiration and non-renewal, shall be effective until 30 days after receipt of written notice by JEA.

Any subcontractors of Company shall procure and maintain the insurance required of Company hereunder during the life of the subcontracts. Subcontractors' insurance may be either by separate coverage or by endorsement under insurance provided by Company. Note: Any JSEB firms identified by Bidders for this Solicitation are considered "Subcontractors" under the direct supervision of the Prime or General Contractor (herein referred to as "Company"). Companies should show good faith efforts in providing assistance to JSEB firms in the securing of the Subcontractors' insurance requirements stated herein. Company shall submit subcontractors' certificates of insurance to JEA prior to allowing Subcontractors to perform Services on JEA's job sites.

2.5.2. INDEMNIFICATION (JEA STANDARD)

The Company shall hold harmless and indemnify JEA against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, reasonable attorney's fees and court costs) arising out of injury (whether mental or corporeal) to persons, including death, or damage to property, arising out of or incidental to the negligence, recklessness or intentional wrongful misconduct of the Company and any person or entity used by Company in the performance of this Contract or Services performed thereunder. For

purposes of this Indemnification, the term "JEA" shall mean JEA as a body politic and corporate and shall include its governing board, officers, employees, agents, successors and assigns. This indemnification shall survive the term of a Contract entered into pursuant to this solicitation, for events that occurred during the Contract term. This indemnification shall be separate and apart from, and in addition to, any other indemnification provisions set forth elsewhere in this Contract.

2.5.3. RISKS AND PROPERTY

Ownership, risks of damage to or loss of the Work shall pass to JEA upon Acceptance. The Company shall retain the sole risk of loss to the Services up to and including the time of Acceptance. In the event of loss or damage to the Services, the Company shall bear all costs associated with any loss or damage.

2.6. TERM AND TERMINATION

2.6.1. TERM OF CONTRACT

This Contract shall commence on the effective date of the Contract, and continue and remain in full force and effect as to all its terms, conditions and provisions as set forth herein for one (1) year or until the Contract's Maximum Indebtedness is reached, whichever occurs first. It is at JEA's sole option to renew the Contract.

It is at JEA's sole option to renew the Contract for two additional one (1) year periods.

This Contract, after the initial year shall be contingent upon the existence of lawfully appropriated funds for each subsequent year of the Contract.

2.6.2. TERMINATION FOR CONVENIENCE

JEA shall have the absolute right to terminate the Contract in whole or part, with or without cause, at any time after the Award effective date upon written notification of such termination.

In the event of termination for convenience, JEA will pay the Company for all disbursements and expenses that the Company has incurred, or has become obligated prior to receiving JEA's notice of termination.
Upon receipt of such notice of termination, the Company shall stop the performance of the Services hereunder except as may be necessary to carry out such termination and take any other action toward termination of the Services that JEA may reasonably request, including all reasonable efforts to provide for a prompt and efficient transition as directed by JEA.

JEA will have no liability to the Company for any cause whatsoever arising out of, or in connection with, termination including, but not limited to, lost profits, lost opportunities, resulting change in business condition, except as expressly stated within these Contract Documents.

2.6.3. TERMINATION FOR DEFAULT

JEA may give the Company written notice to discontinue all Services under the Contract in the event that:

- The Company assigns or subcontracts the Services without prior written permission;
- Any petition is filed or any proceeding is commenced by or against the Company for relief under any bankruptcy or insolvency laws;
- A receiver is appointed for the Company's properties or the Company commits any act of insolvency (however evidenced);
- The Company makes an assignment for the benefit of creditors;
- The Company suspends the operation of a substantial portion of its business;

- The Company suspends the whole or any part of the Services to the extent that it impacts the Company's ability to meet the Services schedule, or the Company abandons the whole or any part of the Services;
- The Company, at any time, violates any of the conditions or provisions of the Contract Documents, or the Company fails to perform as specified in the Contract Documents, or the Company is not complying with the Contract Documents;
- The Company attempts to willfully impose upon JEA items or workmanship that are, in JEA's sole opinion, defective or of unacceptable quality;
- The Company breaches any of the representations or warranties;
- The Company is determined, in JEA's sole opinion, to have misrepresented the utilization of funds or misappropriate property belonging to JEA; or
- Any material change in the financial or business condition of the Company.

If within fifteen (15) days after service of such notice upon the Company an arrangement satisfactory to JEA has not been made by the Company for continuance of the Services, then JEA may declare Company to be in default of the Contract.

Once Company is declared to be in default, JEA will charge the expenses of completing the Services to the Company and will deduct such expenses from monies due, or which at any time thereafter may become due, to the Company. If such expenses are more than the sum that would otherwise have been payable under the Contract, then the Company shall pay the amount of such excess to JEA upon receipt of notice of the expenses from JEA. JEA shall not be required to obtain the lowest price for completing the Services under the Contract, but may make such expenditures that, in its sole judgment, shall best accomplish such completion. JEA will, however, make reasonable efforts to mitigate the excess costs of completing the Services.

The Contract Documents shall in no way limit JEA's right to all remedies for nonperformance provided under law or in equity, except as specifically set forth herein. In the event of termination for nonperformance, the Company shall immediately surrender all Services records to JEA. In such a case, JEA may set off any money owed to the Company against any liabilities resulting from the Company's nonperformance.

JEA has no responsibility whatsoever to issue notices of any kind, including but not limited to deficient performance letters and scorecards, to the Company regarding its performance prior to default by Company for performance related issues.

JEA shall have no liability to the Company for termination costs arising out of the Contract, or any of the Company's subcontracts, as a result of termination for default.

2.6.4. SUSPENSION OF SERVICES

JEA may suspend the performance of the Services by providing Company with a five (5) day written notice of such suspension. Schedules for performance of the Services shall be amended by mutual agreement to reflect such suspension. In the event of a suspension of Services, the Company shall resume the full performance of the Services when directed in writing to do so by JEA.

Suspension of the Services due to the Company's negligence or failure to perform, may affect the Company's compensation as stated in the Contract and/or result in the termination of the Contract.

2.7. PUBLIC RECORDS LAWS

Access to Public Records.

All Documents, data and other records received by JEA in connection with the Contract are public records and available for public inspection unless specifically exempt by law. The Company shall allow public access to all documents, data and other records made or received by the Company in connection with the Contract unless the records are exempt from Section 249(a) of Article I of the Florida Constitution or subsection 119.07(1), Florida Statutes. JEA may unilaterally terminate the Contract of the Company refuses to allow public access as required under the Contract.

Redacted copies of Confidential Information.

If the Company believes that any portion of any documents, data or other records submitted to JEA are exempt from disclosure under Chapter 119, Florida Statutes, the Florida Constitution and related laws ("Florida's Public Records Laws"), Company must (1) clearly segregate and mark the specific sections of the document, data and records as "Confidential", (2) cite the specific Florida Statute or other legal authority for the asserted exemption, and (3) provide JEA with a separate redacted copy of the documents, data, or records (the "Redacted Copy"). The Redacted Copy shall contain JEA's contract name and number, and shall be clearly titled "Redacted Copy". Bidder should only redact those portions of records that Bidder claims are specifically exempt from disclosure under Florida's Public Records Laws. If the Company fails to submit a redacted copy of documents, data, or other records it claims is confidential, JEA is authorized to produce all documents, data, and other records submitted to JEA in answer to a public records request for these records.

Request for Redacted Information.

In the event of a public records or other disclosure request under Florida's Public Records Laws or other authority to which the Company's documents, data or records are responsive, JEA will provide the Redacted Copy to the requestor. If a Requestor asserts a right to any redacted information, JEA will notify the Company that such an assertion has been made. It is the Company's responsibility to respond to the requestor to assert that the information in questions is exempt from disclosure under applicable law. If JEA becomes subject to a demand for discovery or disclosure of the redacted information under legal process, JEA shall give the Company prompt notice of the demand prior to releasing the redacted information (unless otherwise prohibited by applicable law). The Company shall be responsible for defending it determination that the redacted portions of the information are not subject to disclosure.

Indemnification for Redacted Information.

The Company shall protect, defend, and indemnify JEA from and against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs, and expenses (including but not limited to reasonable attorney's fees and costs) arising from or relating to the Company's assertion that all or any portion of its information is not subject to disclosure.

Public Records Clause for Service Contracts.

If, under the Contract, the Company is providing services and is acting on behalf of JEA as contemplated by subsection 119.011(2), Florida Statutes, the Company shall:

- Keep and maintain public records that ordinarily and necessarily would be required by JEA in order to perform service;
- Provide the public with access to public records on the same terms and conditions that JEA would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statues, or otherwise prohibited by law;

- Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
- Meet all requirements for retaining public records and transfer, at no cost, to JEA all public records in possession of the Company upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically shall be provided to JEA in a format that is compatible with the information technology systems of JEA.

IF THE COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COMPANY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

JEA
Attn: Public Records
21 West Church Street
Jacksonville, Florida 32202
Ph: 904-665-8606
publicrecords@jea.com

2.8. CONFIDENTIALITY AND OWNERSHIP OF DOCUMENTATION

2.8.1. INTELLECTUAL PROPERTY

The Company grants to JEA an irrevocable, perpetual, royalty free and fully paid-up right to use (and such right includes, without limitation, a right to copy, modify and create derivative works from the subject matter of the grant of the right to sublicense all, or any portion of, the foregoing rights to an affiliate or a third party service provider) the Company's intellectual property (including, without limitation, all trade secrets, patents, copyright and know-how) that is contained or embedded in, required for the use of, that was used in the production of or is required for the reproduction, modification, maintenance, servicing, improvement or continued operation of any applicable unit of work.

If the Services contains, has embedded in, requires for the use of any third party intellectual property, or if the third party intellectual property is required for the reproduction, modification, maintenance, servicing, improvement or continued operation of the Services, the Company shall secure for JEA an irrevocable, perpetual, royalty free and fully paid-up right to use all third party intellectual property. The Company shall secure such right at its expense and prior to incorporating any third party intellectual property (including, without limitation, all trade secrets, patents, copyright and know-how) into any Services, including, without limitation, all drawings or data provided under the Contract, and such right must include, without limitation, a right to copy, modify and create derivative works from the subject matter of the grant of the right and a right to sublicense all or any portion of the foregoing rights to an affiliate or a third party service provider.

Should JEA, or any third party obtaining such work product through JEA, use the Services or any part thereof for any purpose other than that which is specified herein, it shall be at JEA's sole risk.

The Company will, at its expense, defend all claims, actions or proceedings against JEA based on any allegation that the Services, or any part of the Services, constitutes an infringement of any patent or any other intellectual property right, and will pay to JEA all costs, damages, charges, and expenses occasioned to JEA by reason thereof. JEA will give the Company written notice of any such claim, action or proceeding and, at the request and expense of the Company, JEA will provide the Company with available information, assistance and authority for the defense.

If, in any action or proceeding, the Services, or any part thereof, is held to constitute an infringement, the Company will, within 30 days of notice, either secure for JEA the right to continue using the Services or will, at the Company's expense, replace the infringing items with noninfringing Services or make modifications as necessary so that the Services no longer infringes.

The Company will obtain and pay for all patent and other intellectual property royalties and license fees required in respect of the Services.

2.8.2. PROPRIETARY INFORMATION

The Company shall not copy, reproduce, or disclose to third parties, except in connection with the Services, any information that JEA furnishes to the Company. The Company shall insert in any subcontract a restriction on the use of all information furnished by JEA. The Company shall not use this information on another project. All information furnished by JEA will be returned to JEA upon completion of the Services.

2.8.3. PUBLICITY AND ADVERTISING

The Company shall not take any photographs, make any announcements or release any information concerning the Contract or the Services to any member of the public, press or official body unless prior written consent is obtained from JEA.

2.8.4. PATENTS AND COPYRIGHTS

In consideration of ten dollars ($10.00), receipt and sufficiency is hereby acknowledged, Company shall hold harmless and indemnify JEA from and against liability or loss, including but not limited to any claims, judgments, court costs and attorneys' fees incurred in any claims, or any pretrial, trial or appellate proceedings on account of infringements of patents, copyrighted or uncopyrighted works, secret processes, trade secrets, patented or unpatented inventions, articles or appliances, or allegations thereof, pertaining to the Services, or any part thereof, combinations thereof, processes therein or the use of any tools or implements used by Company.

Company will, at its own expense, procure for JEA the right to continue use of the Services, parts or combinations thereof, or processes used therein resulting from a suit or judgment on account of patent or copyright infringement.

If, in any such suit or proceeding, a temporary restraining order or preliminary injunction is granted, Company will make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of such restraining order or temporary injunction.

If, in any such suit or proceeding, any part of the Services is held to constitute an infringement and its use is permanently enjoined, Company will, at once, make every reasonable effort to secure for JEA a license, authorizing the continued use of the Services. If Company fails to secure such license for JEA, Company will replace the Services with non-infringing Services, or modify the Services in a way satisfactory to JEA, so that the Services are non-infringing.

2.8.5. DATA OWNERSHIP, PROTECTION & LOCATION

JEA shall own all right, title and interest in all data of JEA and JEA's customer's that is related to the services provided by the Company under this Contract. The Company shall only access JEA's data and JEA's customer's accounts and data if (1.) in the course of providing the services contemplated by this Contract, (2.) in response to service or technical issues, (3.) as required by the express terms of this Contract, or (4.) at JEA's written response. Protection of personal privacy and data shall be an integral part of the services to be provided by the Company under the Contract to ensure that there is no inappropriate or unauthorized use of data of JEA or JEA's customers at any time. The Company shall safeguard the confidentiality, integrity, and availability of all data of JEA and its customers and comply with the following conditions :(a.) The Company shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against the unauthorized access, disclosure or theft of Personal Data or Non-Public Data. For the purposes of the Contract, "Personal Data" shall mean data that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information: government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information including account umber, credit or debit card numbers; or protected health information relating to a person. Non-Public Data shall mean under this Contract, other than Personal Data, that is not subject to distribution to the public as public information and is deemed to be sensitive and confidential because it is exempt by statute, ordinance or administrative rule from access by the general public as public information;(b.) All data obtained by Company under the Contract shall become and remain the property of JEA ;(c.) All Personal Data and Non-Public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise agreed in writing by JEA and the Company, the Company shall be responsible for encryption of the Personal Data and non-Public Data ;(d.) At no time shall any Personal data or Non-Public Data of JEA or its customers be copied, disclosed or retained by the Company or any party related to the Company for subsequent use in any transaction that is not a part of the services to be provided under this Contract; (e.) The Company shall not use any Personal Data, Non-Public Data or any other information collected in connection with the Contract for any purpose other than providing the service pursuant to this Contract; The Company will prevent its employees, other than employees with a need to know, from gaining access to JEA's data and information. The Company will direct and take all reasonable steps to insure that any Company employee who encounters any such information during the course of performing the Company's responsibilities of this Contract shall maintain the confidentiality of such information, which shall not be passed onto other Company employees or any other person. The Company shall also enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of JEA data to that which is absolutely necessary to perform job duties. The Company shall provide its services to JEA and JEA's customers solely from data centers in the United States. Storage of JEA data at rest shall be located solely in data centers in the United States. The Company shall not allow its personnel or its subcontractors to store JEA and JEA customer data on portable devices, including personal computers, except for devices that are used and kept only at its data centers in the United States, The Company shall permit its personnel and subcontractors to access JEA and JEA customer's data remotely only as required to provide technical support. The Company shall deploy reasonable steps and safeguards as part of a network security program in accordance with accepted industry practices, including but not limited to, Purchasing Card Industry-Data Security Standards (PCI-DSS), to prevent unlawful hacking to gain surreptitious access into JEA's and JEA's customer’s data.

The Company shall promptly notify JEA of any breaches or issues regarding the security of systems that maintain JEA or JEA's customer data. However, any such notification by the Company shall not affect the Company's obligations to secure JEA's data as provided under this Contract. The Company shall notify JEA within six (6) hours if it learns that JEA or JEA's customers has been, or may have been, the subject of a Security Incident (which is defined below) of any kind which may compromise data of JEA or its customers. In any such event, the Company shall: (1.) investigate the incidents and provide a report to JEA with twenty-four (24) hours; (2) conduct a forensic investigation to determine a cause and what data/systems are implicated; (3.) provide daily updates of its investigation to JEA and permit JEA reasonable access to the investigation; (4.) communicate and cooperate with JEA concerning communication with outside parties such as law enforcement and media; and (5.) cooperate with

JEA in determining whether and how notice, if any, will be provided to JEA's customers with all applicable laws and regulations.

The term "Security Incident" means the potentially unauthorized access by non-authorized persons to Personal date or Non-Public Data that the Company believes could reasonably result in the use, disclosure, or theft of unencrypted Personal Data or Non-Public Data of JEA or its customers within the possession or control of the Company. If a Data Breach (defined below) with respect to Personal Data or Non-Public data has occurred, the Company shall promptly implement necessary remedial measures and document responsive actions taken related to the Data Breach, including any post-incident review and actions taken to make changes in business practices in providing the services, if necessary.

If a Data Breach is a result of the Company's breach of its Contract obligation to encrypt Personal Data or Non-Public Data or otherwise prevent the release of Personal or Non-Public Data or the Company's failure to comply with any of the security requirements comply with this Contract, the Company shall bear the costs associated with (1.) the investigation and resolution of the Data Breach; (2.) notifications to individuals, regulators or other required by state law; (3.) a credit monitoring service required by state or federal law; (4) a website or toll-free number and call center for affected individuals required by state law; and (5.) completing all corrective actions as reasonably determined by the Company based on root cause.

The term "Data Breach" means the unauthorized access by a non-authorized person or persons that results in the use, disclosure or theft of the unencrypted Personal Data, Non-Public Data or JEA's customer information.

2.9. LABOR

2.9.1. LEGAL WORKFORCE

JEA shall consider the Company's employment of unauthorized aliens a violation of section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for termination of the Contract for default upon thirty (30) days' prior written notice of such termination, notwithstanding any other provisions to the contrary in the Contract Documents.

2.9.2. PROHIBITED FUTURE EMPLOYMENT

It shall be unlawful and a class C offense for any person, who was an officer or employee of JEA, after his or her employment has ceased, to be employed by or enter into any contract for personal services, with a person or company who contracted with, or had a contractual relationship with JEA, while the contract is active or being completed, or within two years of the cessation, completion, or termination of the person's or company's contractual relationship with JEA, where (1) the contract with JEA had a value that exceeded $250,000, and (2) the officer or employee had a substantial and decision-making role in securing or negotiating the contract or contractual relationship, or in the approval of financial submissions or draws in accordance with the terms of the contract; except that this prohibition shall not apply to an employee whose role is merely as a review signatory, or to contracts entered into prior to January 1, 2008, or to contracts that have been competitively procured. With respect to this subsection a contract is competitively procured if it has been obtained through a sealed low bid award. A "substantial and decision-making role" shall include duties and/or responsibilities that are collectively associated with: (i) approving solicitation or payment documents; (ii) evaluating formal bids and proposals; and (iii) approving and/or issuing award recommendations for JEA Awards Committee approval. The contract of any person or business entity who hires or contracts for services with any officer or employee prohibited from entering into said relationship shall be voidable at the pleasure of JEA. This prohibition shall not apply to any former officer or employee after two years from cessation from JEA employment.

2.9.3. HIRING OF OTHER PARTY'S EMPLOYEES

Each party recognizes that the other party has incurred or will incur significant expenses in training its own employees and agrees that it will not pursue or hire, without the other party's consent, the other party's employees or the employees of its subsidiaries for a period of two (2) years from the termination date of this Agreement. It shall not be considered a breach of this Section for either party to make employment solicitations to the general public or groups that may include employees of the other party. Nor shall it be considered a breach of this Section for either party to respond to, act upon, or accept inquiries and applications resulting from, or make offers of employment resulting from, (i) such solicitations to the general public or groups or (ii) unsolicited employment inquiries or applications.

2.10. COMPANY'S RESPONSIBILITIES AND PERFORMANCE OF THE CONTRACT

2.10.1. JEA ACCESS BADGES

If the scope of work described in this Contract requires a Company to access JEA facilities and/or properties, the JEA contract manager will determine whether or not each impacted Company employee shall apply for a JEA access badge. This determination will be made based upon the business need and in accordance with the applicable JEA Security policies and procedures. Based upon the type of work being performed, JEA may also require the Company to provide a criminal background check on the employee prior to the issuance of the JEA access badge. JEA Security will provide all applicable standards and requirements for the background check All costs associated with the criminal background check are the responsibility of the Company. JEA does not allow Company employees to share JEA access badges.

Company employees issued an access badge are required to adhere to all JEA Security badge usage policies and procedures. A Company whose employees are found to be violating these, or any other JEA Security policies, may result in the Contract being terminated immediately for default.

In particular, JEA shall be notified within 24 hours of a lost or stolen JEA access badge or when an employee leaves the Company. The Company will bear any costs associated with issuance, and production, of any lost or stolen JEA access badge. The Company is required to report all badge loss, or termination, notifications to their respective JEA contract manager and JEA Security. JEA Security can be contacted at (904) 665-8200 or security@jea.com. Failure to report these items per the requirements may result in significant regulatory fines and penalties against JEA. The Company may be responsible for all costs associated with these charges and the company may receive a security violation which could result in the Contract being terminated for default.

The language in the above paragraphs shall also apply to Company’s Subcontractors, and shall be included in Company’s contracts with its Subcontractors for Work or Services to be performed at JEA.

2.10.2. JEA CRITICAL INFRASTRUCTURE PROTECTION (CIP)

Pursuant to federal regulations, JEA is required to implement Critical Infrastructure Protection (CIP) and comply with NERC/FERC reliability standards for identified assets (collectively the "Assets"). Assets can be defined as either physical or cyber that are essential for JEA to maintain the integrity of the bulk electric system. Therefore, a Company that requires access to the Assets shall require that each of its employees, who require unescorted access, apply for a JEA access badge through JEA’s Security Department. Depending on which Assets a Company must access will determine the specific JEA training and/or criminal background check that will be required before an access badge can be issued. The Company will be responsible for all costs associated with any criminal background check and the employee labor required to complete the JEA provided training.

The language in the above paragraph shall also apply to Company's Subcontractors, and shall be included in Company's contracts with its Subcontractors for Work or Services to be performed at JEA.

JEA reserves the right to modify these terms if the applicable regulations change or additional regulations become applicable. JEA will provide sufficient notice in advance for Company to adapt the updated regulations.

2.10.3. JEA CONFIDENTIAL INFORMATION PROTECTION

JEA is a publicly owned utility and all official information sharing is governed by the Florida Sunshine Laws. However, certain information that could impact safe and secure operations may be exempt which includes information classified as confidential and protected under federal regulatory standards. Confidential information means any data or information that is propriety to the Parties and not generally known to the public, whether in tangible or intangible form, whenever or however disclosed, including but not limited to:

- Critical Infrastructure Information (CII) or Bulk Electric System Information (BCSI) or Security Sensitive Information (SSI) classified by JEA
- Protected Health Information in both physical and electronic form (PHI and ePHI)
- Personal Identifiable Information (PII)
- any protected, non-public information concerning the design or operation of present or future critical infrastructure;
- any information that could be used to compromise or expose the vulnerability of the Parties Cyber systems, processes, programs data, communications, energy and operations systems or structures;
- any Copyright application code, source code, technical design (not released for open use), trade secret, scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method;
- any computer software, source code, object code, flow charts or databases; and
- any other information that should reasonably be recognized as sensitive or confidential information of the Recipient or the disclosing party.

All Company employees, and subcontractors, whose scope of work requires access, logical or physical, that may expose them to confidential information may be required to complete a Non-Disclosure Agreement, criminal background check, and periodic reoccuring security training. The Company shall bear all costs associated with the background check and security training. JEA will be responsible for the identification of all requirements and providing the required security training.

2.10.4. TRANSITION SERVICES

At any time prior to the date the Contract expires or terminates for any reason (the "Termination Date"), JEA may request Company to provide reasonable transition assistance services ("Transition Assistance"). The Company will provide such Transition Assistance until such time as JEA notifies the Company that JEA no longer requires such Transition Assistance, but in no event for more than 180 days following the Termination Date.

Transition Assistance shall mean any services, functions or responsibilities that are ordinarily or customarily provided to a purchaser to ensure that the services provided to that purchaser by a contractor are fully transitioned in a smooth and efficient manner to a new service contractor (either JEA itself or a third party contractor). Transition Assistance includes the development and implementation of a detailed transition plan. To the extent that Transition Assistance will involve third parties hired by JEA, those third parties shall cooperate with Company in its provision of Transition Assistance and sign any reasonable non-disclosure agreements required by Company.

Transition Assistance rendered before the Termination Date shall be provided at no additional cost to JEA. Transition Assistance rendered after the Termination Date shall be provided at the rates negotiated by the parties prior to the rendering of such service, which rates shall not exceed the standard market rates that Company charges

to government entities for comparable services; provided however, that if JEA terminates the Contract because of a breach by Company, then (i) the Transition Assistance shall be provided at no cost to JEA, and (ii) JEA will be entitled to any other remedies available to it under law. Company may withhold Transition Assistance after the Termination Date if JEA does not provide reasonable assurance that the charges for such Transition Assistance will be paid to Company in accordance with the invoicing and payment provisions of the Contract.

2.10.5. COMPANY REPRESENTATIVES

The Company shall provide JEA with the name and responsibilities of the Company Representative, in writing after Award of the Contract and before starting the Services under the Contract. Should the Company need to change the Company Representative, the Company shall promptly notify JEA in writing of the change.

2.10.6. LICENSES

The Company shall comply with all licensing, registration and/or certification requirements pursuant to applicable laws, rules and regulations. The Company shall secure all licenses, registrations and certifications as required for the performance of the Services and shall pay all fees associated with securing them. The Company shall produce written evidence of licenses and other certifications immediately upon request from JEA.

2.10.7. SAFETY AND PROTECTION PRECAUTIONS

The Company shall comply with all applicable federal, state and local laws, ordinances, all JEA procedures and policies including any orders of any public body having jurisdiction for the safety of persons or protection of property. The Company understands and agrees that a violation of any provision of this clause is grounds for a Termination for Default, with no requirement to provide Company with a notice to cure. Additionally, the Company shall be responsible for all JEA damages associated with such termination.

2.11. VENDOR PERFORMANCE EVALUATION

2.11.1. VENDOR PERFORMANCE EVALUATION

Use of Vendor Performance Evaluation Scorecards

JEA may evaluate the Company's performance using the evaluation criteria shown on the vendor scorecard. The scorecard is included as **Appendix C- Vendor Scorecard**.

Scores for all metrics shown on the evaluation range from a low of 1, meaning significantly deficient performance, to a high of 5, meaning exceptionally good performance. The Company's performance shall be classified as Top Performance, Acceptable Performance, or Unacceptable Performance, as defined herein. The evaluator will be a designated JEA employee. The evaluator's supervisor and the Chief Purchasing Officer will review deficient performance letters and Unacceptable Performance scorecards, as described below, prior to issuance. When evaluating the Company's performance, JEA will consider the performance of the Company's Subcontractors and suppliers, as part of the Company's performance.

Frequency of Evaluations

JEA may conduct performance evaluations and prepare scorecards in accordance with the procedures described herein at any time during performance of the Work or soon after the completion of the Work. JEA may conduct one or more evaluations determined solely at the discretion of JEA.

Unacceptable Performance

- If at any time, JEA determines, using the criteria described on the scorecard, that the performance of the Company is Unacceptable, the Contract Administrator and Chief Procurement Officer or his designated alternate will notify the Company of such in a letter. The Company shall have 10 days to respond to the Contract Administrator. Such response shall include, and preferably be delivered in-person by an officer of the Company, the specific actions that the Company will take to bring the Company's performance up to at least Acceptable Performance.
- Within 30 days from date of the first Unacceptable Performance letter, the Contract Administrator and Chief Purchasing Officer or his designated alternate will notify the Company by letter as to whether its performance, as determined solely by JEA, is meeting expectations, or is continuing to be Unacceptable. If the Company's performance is described in the letter as meeting expectations, no further remedial action is required by the Company, as long as Company's performance continues to be Acceptable.
- If the Company's performance as described in the letter continues to be Unacceptable, or is inconsistently Acceptable, then the Company shall have 15 days from date of second letter to demonstrate solely through its performance of the Work, that it has achieved Acceptable Performance. At the end of the 15-day period, JEA will prepare a scorecard documenting the Company's performance from the start of Work, or date of most recent scorecard, whichever is latest, and giving due consideration to improvements the Company has made in its performance, or has failed to make. If the scorecard shows Company's performance is Acceptable, then no further remedial action is required by Company as long as Company's performance remains Acceptable. If the scorecard shows the Company's performance is Unacceptable, JEA will take such actions as it deems appropriate including, but not limited to, terminating the Contract for breach, suspending the Company from bidding on any JEA related solicitations, and other remedies available in the JEA Purchasing Code and in law. Such action does not relieve the Company of its obligations under the Contract, nor does it preclude an earlier termination.
- In the event that the Contract Term or the remaining Term of the Contract does not allow for the completion of the deficient performance notification cycles described above for those in danger of receiving an Unacceptable Performance scorecard, JEA may choose to accelerate these cycles at its sole discretion.
- If the Company receives five or more letters of deficiency within any 12 month period, then JEA will prepare a scorecard describing the deficiencies and the Company's performance will be scored as Unacceptable.

Acceptable Performance

JEA expects the Company's performance to be at a minimum Acceptable.

Disputes

In the event that the Company wants to dispute the results of its scorecard performance evaluation, the Company must submit a letter to the Chief Procurement Officer supplying supplemental information that it believes JEA failed to take into account when preparing the scorecard. Such letter, along with supplemental information, must be submitted no later than 10 days following the Company's receipt of the scorecard. If the Chief Procurement Officer decides to change the scorecard, the Company will be notified and a revised scorecard will be prepared, with a copy issued to the Company. If the Chief Procurement Officer decides that no change is warranted, the decision of the Chief Procurement Officer is final. If the Company is to be suspended from consideration for future Award of any contracts, the Company may appeal to the Procurement Appeals Board as per JEA Procurement Code.

Public Records

There can be no expectation of confidentiality of performance-related data in that all performance-related data is subject to disclosure pursuant to Florida Public Records Laws. All scorecards are the property of JEA.

2.12. JEA RESPONSIBILITIES

2.12.1. COORDINATION OF SERVICES PROVIDED BY JEA

The JEA Representative for the Services will, on behalf of JEA, coordinate with the Company and administer this Contract. It shall be the responsibility of the Company to coordinate all assignment related activities with the designated JEA Representative. The JEA Representative will be assigned to perform day-to-day administration and liaison functions, and to make available to the Company appropriate personnel, to the extent practical, and to furnish records and available data necessary to conduct the Services. The JEA Representative will also authorize the Company to perform work under this Contract.

2.13. MISCELLANEOUS PROVISIONS

2.13.1. AMBIGUOUS CONTRACT PROVISIONS

The parties agree that this Contract has been the subject of meaningful analysis and/or discussions of the specifications, terms and conditions contained in this Contract. Therefore, doubtful or ambiguous provisions, if any, contained in this Contract will not be construed against the party who physically prepared this Contract.

2.13.2. AMENDMENTS

This Contract may not be altered or amended except in writing, signed by JEA Chief Procurement Officer, or designee, and the JEA Representative.

2.13.3. APPLICABLE STATE LAW; VENUE; SEVERABILITY

The rights, obligations and remedies of the parties as specified under the Contract will be interpreted and governed in all respects exclusively by the laws of the State of Florida without giving effect to the principles of conflicts of laws thereof. Should any provision of the Contract be determined by the courts to be illegal or in conflict with any law of the State of Florida, the validity of the remaining provisions will not be impaired. Litigation involving this Contract or any provision thereof shall take place in the State or Federal Courts located exclusively in Jacksonville, Duval County, Florida.

2.13.4. CONTINUING SERVICES

The Company shall carry on the Work and maintain the progress schedules during disputes or disagreements with JEA. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as JEA and Company may otherwise agree in writing. Suspension of the Work or portion thereof by Company shall entitle JEA to terminate the Contract for Default

2.13.5. CUMULATIVE REMEDIES

Except as otherwise expressly provided in this Contract, all remedies provided for in this Contract shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise.

2.13.6. DELAYS

Neither party shall be considered in default in the performance of its obligations hereunder to the extent that the performance of such obligation is prevented or delayed by any cause beyond the reasonable control of the affected party, and the time for performance of either party hereunder shall be extended for a period of equal to any time lost due to such prevention or delay.

2.13.7. DISPUTES

If a dispute occurs between JEA and the Company over a contractual issue that cannot be mediated by the JEA Representative, the dispute shall be handled in accordance with Article 5 of the JEA Procurement Code.

2.13.8. ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties. No statement, representation, writing, understanding, or agreement made by either party, or any representative of either party, which are not expressed herein shall be binding. All changes to, additions to, modifications of, or amendment to this Contract, or any of the terms, provisions and conditions hereof, shall be binding only when in writing and signed by the authorized officer, agent or representative of each of the parties hereto.

2.13.9. EXPANDED DEFINITIONS

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders. The term "including" means "including without limitation", and the terms "include", "includes" and "included" have similar meanings. Any reference in this Contract to any other agreement is deemed to include a reference to that other agreement, as amended, supplemented or restated from time to time. Any reference in the Contract to "all applicable laws, rules and regulations" means all federal, state and local laws, rules, regulations, ordinances, statutes, codes and practices.

2.13.1. FORCE MAJEURE

No party shall be liable for any default or delay in the performance of its obligations under this Contract due to an act of God or other event to the extent that: (a) the non-performing party is without fault in causing such default or delay; (b) such default or delay could not have been prevented by reasonable precautions; and (c) such default or delay could not have been reasonably circumvented by the non-performing party through the use of alternate sources, work-around plans or other means. Such causes include, but are not limited to: act of civil or military authority (including but not limited to courts or administrative agencies); acts of God; war; terrorist attacks; riot; insurrection; inability of JEA to secure approval, validation or sale of bonds; inability of JEA or the Company to obtain any required permits, licenses or zoning; blockades; embargoes; sabotage; epidemics; fires; hurricanes, tornados, floods; or strikes.

In the event of any delay resulting from such causes, the time for performance of each of the parties hereunder (including the payment of monies if such event actually prevents payment) shall be extended for a period of time reasonably necessary to overcome the effect of such delay, except as provided for elsewhere in the Contract Documents.

In the event of any delay or nonperformance resulting from such causes, the party affected shall promptly notify the other in writing of the nature, cause, date of commencement and the anticipated impact of such delay or nonperformance. Such written notice, including Change Orders, shall indicate the extent, if any, to which it is anticipated that any delivery or completion dates will be thereby affected within seven (7) calendar days.

2.13.2. INDEPENDENT CONTRACTOR

Company is performing this Contract as an independent contractor and nothing in this Contract will be deemed to constitute a partnership, joint venture, agency, or fiduciary relationship between JEA and Company. Neither Company nor JEA will be or become liable or bound by any representation, act, or omission of the other.

2.13.3. LANGUAGE AND MEASUREMENTS

All communication between the Company and JEA, including all documents, notes on drawings, and submissions required under the Contract, will be in the English language. Unless otherwise specified in the Contract, the US

System of Measurements shall be used for quantity measurement. All instrumentation and equipment will be calibrated in US System of Measures.

2.13.4. MEETINGS AND PUBLIC HEARINGS

The Company will, upon request by JEA, attend all meetings and public hearings as required, in any capacity, as directed by JEA.

2.13.5. NEGOTIATED CONTRACT

Except as otherwise expressly provided, all provisions of this Contract shall be binding upon and shall inure to the benefit of the parties, their legal representatives, successors and assigns. The parties agree that they have had meaningful discussion and negotiation of the provisions, terms and conditions contained in this Contract. Therefore, doubtful or ambiguous provisions, if any, contained in the Contract shall not be construed against the party who physically prepared this Contract.

2.13.6. NONEXCLUSIVE

Notwithstanding anything contained herein that may appear to be the contrary, this Contract is "non-exclusive" and JEA reserves the right, in its sole discretion, to retain other companies to perform the Services, and/or JEA may self-perform the Services itself.

2.13.7. REFERENCES

Unless otherwise specified, each reference to a statute, ordinance, law, policy, procedure, process, document, drawing, or other informational material is deemed to be a reference to that item, as amended or supplemented from time to time. All referenced items shall have the enforcement ability as if they are fully incorporated herein.

2.13.8. RIGHT TO AUDIT AND FINANCIAL REPORTING

Accounting System

The Company shall establish and maintain a reasonable accounting system that enables JEA to readily identify the Company’s assets, expenses, cost of goods, and use of funds.

Audited Financial Statements

The Company shall provide to JEA audited financial statements for the most recent fiscal year upon JEA's request, not later than five days after receipt of written request.

Content and Retention of Records

Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Company shall, at all times during the term of this Contract and for a period of five years after the completion of this Contract, maintain such records, together with such supporting or underlying documents and materials.

Inspection /Audit of Records

Upon JEA's request, the Company agrees to allow JEA to audit, to examine, and to make copies of or extracts from its financial and operating records (in whatever form they may be kept, whether written, electronic, or other) kept by the Company, its employees, agents, assigns, successors, and subcontractors, for the purpose of determining invoice accuracy, or otherwise assessing compliance with the Contract Documents.

The Company shall at any time requested by JEA, whether during or after completion of this Contract, and at Company's own expense make such records available for inspection and audit (including copies and extracts of records as required) by JEA. Such records shall be made available to JEA during normal business hours at the Company's office or place of business in a workspace suitable for the audit and [subject to a three day written notice/without prior notice]. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for JEA. The Company agrees to have knowledgeable personnel available to answer questions for the auditors during the time they are performing the audit and for a period of two weeks thereafter. Company shall ensure JEA has these rights with Company's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Company and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Company's obligations to JEA.

Cost of Audits

Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by JEA unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Company to JEA in excess of one-half of one percent (.5%) of the total contract billings, the Company shall reimburse JEA for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or nonperformance, JEA may recoup the costs of the audit work from the Company.

Billing Adjustments and Recoveries

Any billing payment recoveries to JEA that must be made as a result of any such audit or inspection of the Company's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of JEA's findings to Company.

Failure to Comply

If Company fails to comply with the requirements contained in this clause, the Company may be found to be in breach of the Contract, be subject to debarment or suspension of bidding privileges with JEA, and/or JEA may exercise any other remedies available by law.

2.13.9. SEVERABILITY

In the event that any provision of this Contract is found to be unenforceable under applicable law, the parties agree to replace such provision with a substitute provision that most nearly reflects the original intentions of the parties and is enforceable under applicable law, and the remainder of this Contract shall continue in full force and effect. With regard to any provision in this agreement pertaining to damages, equitable or otherwise, it is the intent of the Parties that under no circumstances shall there be recovery for home office overhead. Any damages claimed shall be proven by discreet accounting of direct project costs and no theoretical formula or industry estimating reference manuals shall be permissible.

2.13.10. SUBCONTRACTING OR ASSIGNING OF CONTRACT

Each party agrees that it shall not subcontract, assign, delegate, or otherwise dispose of the Contract, the duties to be performed under the Contract, or the monies to become due under the Contract without the other party's prior written consent.

The assignment of the Contract will not relieve either of the parties of any of its obligations until such obligations have been assumed in writing by the assignee. If the Contract is assigned by either of the parties, it will be binding upon and will inure to the benefit of the permitted assignee. The Company shall be liable for all acts and omissions of its assignee or its Subcontractor.

In the event the Company obtains JEA approval to use Subcontractors, the Company is obligated to provide Subcontractors possessing the skills, certifications, registrations, licenses, training, tools, demeanor, motivation and attitude to successfully perform the work for which they are subcontracted. The Company is obligated to remove Subcontractors from performing Services under this Contract when the Company recognizes that a Subcontractor is failing to work in a manner consistent with the requirements of this Contract, or when JEA notifies the Company that JEA has determined a Subcontractor is failing to work in a manner consistent with the requirements of this Contract.

2.13.11. SURVIVAL

The obligations of JEA and the Company under this Contract that are not, by the express terms of this Contract, to be performed fully during the Term, shall survive the termination of this Contract.

2.13.12. TIME AND DATE

Unless otherwise specified, references to time of day or date mean the local time or date in Jacksonville, FL. If under this Contract any payment or calculation is to be made, or any other action is to be taken, on or as of a day that is not a regular business day for JEA, that payment or calculation is to be made, and that other action is to be taken, as applicable, on or as of the next day that is a regular business day. Where reference is made to day or days, it means calendar days. Where reference is made to workday, workdays, business day, or business days, it means regular working days for JEA Procurement.

2.13.13. TIME OF ESSENCE

For every material requirement of this Contract, time is of the essence.

2.13.14. WAIVER OF CLAIMS

A delay or omission by JEA to exercise any right or power under this Contract shall not be construed to be a waiver thereof. A waiver by JEA under this Contract shall not be effective unless it is in writing and signed by the party granting the waiver. A waiver by a party of a right under or breach of, this Contract shall not be construed to operate as a waiver of any other or successive rights under, or breaches of, this Contract.

The Company's obligations to perform and complete the Services in accordance with the Contract shall be absolute. None of the following will constitute a waiver of any of JEA's rights under the Contract: approval of payments, including final payment; Certificate of Contract Completion; any use of the Services by JEA; nor any correction of faulty or defective Services by JEA.

3. APPENDIX A – BUSINESS REQUIREMENTS

4. APPENDIX – FORMS

Appendix B – Minimum Qualifications Form
Appendix B – Response Workbook
Appendix B – Response Form
Appendix B – Cloud, Outsourced, or Managed Services Solution Procurement Evaluation Matrix
Appendix B – List of Subcontractors Form
Appendix C – Vendor Scorecard