

Exhibit 6 - Draft Contract Terms and Conditions

1.1 Termination for Convenience.

City shall have the right to terminate any Contract, in whole or part, without cause, including the absence of funds budgeted for the Contract in a fiscal year, upon seven (7) calendar days; written notice to CONSULTANT. In the event of such termination for convenience, CONSULTANT's recovery against CITY shall be limited to that portion of the payment amount earned through the date of termination, either by the completion and acceptance of a Deliverable in accordance with Section 1.10, below, or by partial performance of a Deliverable documented by CONSULTANT so as to demonstrate entitlement to payment of a pro rata portion of the price of the Deliverable as designated in this Contract, but CONSULTANT shall not be entitled to any other or further recovery against CITY. Termination of the Contract or a portion thereof shall neither relieve the CONSULTANT of its responsibilities for the completed Work nor shall it relieve its surety of its obligation for and concerning any just claim arising out of the work performed.

1.2 Termination.

The contract will provide termination by the City without cause upon 30 days prior written notice to the Contractor. In the event of termination, the Contractor will be compensated for services rendered up to and including the day of termination.

1.3 Termination for Default

CITY shall have the right to terminate the Contract, in whole or part (individually or collectively a "Default"), if CONSULTANT fails to observe or perform, breaches or is guilty of a substantial violation of the following: (i) any term of this Contract; (ii) any willful and material falsification by CONSULTANT of any report, recommendation, design, statement, or data furnished to CITY; (iii) any attempted or purported assignment of this Contract, but the Contract/ shall remain binding and in full force and effect as between CONSULTANT and CITY until CITY elects to terminate the same; (iv) any breach of CONSULTANT's representations, warranties, confidentiality obligations or material obligations under the Contract; or (v) any claim of infringement by CONSULTANT of any patent, trademark, copyright or third party intellectual property rights arising from or relating to any Services or Deliverables, after serving at least ten days' written notice to CONSULTANT of CITY's intent to terminate and after such Default shall continue unremedied for a period of ten days, may terminate the Contract without prejudice to any other rights or remedies it may have under this Contract. If, after Default under this subsection, it is determined for any reason that CONSULTANT was not in Default, or that its Default was excusable, or that CITY is not entitled to the remedies against CONSULTANT provided herein, then CONSULTANT's remedies against CITY shall be the same as and limited to those afforded CONSULTANT pursuant to the subsection title Termination for Convenience which appears below.

1.4 Remedies Not Exclusive

The right of CITY to terminate this Contract pursuant to this Section 1.2, above, and accompanying remedies, whether or not exercised, is not exclusive of any other rights or remedies given CITY by this Contract or by law on account of any default of CONSULTANT hereunder.

1.5 Determination of Willful Conduct

Any Default described in Section 1.2, above, will be conclusively deemed to be willful and repeated if it occurs after written notice from CITY to cease and desist therefrom, but nothing in this sentence will be construed to mean that acts or omissions described above may not be considered to be willful and repeated in the absence of such notice. Any notice of termination by CITY pursuant to this subsection is fully effective, and this Contract, at the CITY's sole and absolute discretion, will thereby be terminated, notwithstanding that CONSULTANT may have ceased any acts that gave rise to such notice, and notwithstanding that CONSULTANT may have taken steps to counteract the effects of such acts.

1.6 Automatic Termination

This Contract terminates immediately without the necessity of notice of any kind by CITY to CONSULTANT. Upon the occurrence of the adjudication of CONSULTANT as bankrupt, or the filing of any petition by or against CONSULTANT, under the federal bankruptcy laws or the laws of any state or territory relating to relief of debtors, for reorganization, arrangement, or other similar relief provided therein or the making by CONSULTANT of a general assignment for the benefit of creditors or the appointment of any receiver, trustee, sequestration, or similar officer to take charge of CONSULTANT's business, or any attachment, execution, levy, seizure, or appropriation by any legal process of CONSULTANT interest in this Contract.

1.7 Effect of Termination

Upon termination of the Contract, for any reason, CONSULTANT shall immediately cease all work being performed under such Contract. In the event of the termination or expiration of the Contract, CONSULTANT shall immediately cease all use of any Confidential Information of the CITY, and shall remove from all CONSULTANT files, computer networks and devices all CITY data, records or other materials and all CITY Confidential Information, and return all copies of the foregoing to CITY. CONSULTANT shall immediately deliver to CITY, in formats maintained and as reasonable requested by CITY, all Deliverables, work product, and work in progress, including incomplete work, including but not limited to all designs, drafts, reports, studies, and data.

1.8 Intellectual Property, Confidentiality, and Non-Disclosure

The Parties agree to execute and be bound by the terms of the Nondisclosure Agreement attached hereto and incorporated as Exhibit 8, and the following additional terms.

a. Work for Hire and Assignment

The Parties agree that any Work, including any Services and Deliverables, created, authored, made or provided to CITY by or behalf of Consultant and any other Intellectual Property which qualifies as a *work made for hire* under the U.S. Copyright laws will be considered having been commissioned by the CITY from Consultant as a *work made for hire to be owned by CITY*. CONSULTANT hereby assigns to CITY all worldwide right, title and interest in and to the following: the Work including the Services and Deliverable, including without limit any improvements to or derivative works of any CITY Intellectual Property or Current CITY System, the new CITY ERP System and all Intellectual Property associated with the forgoing and any other Intellectual Property created, made, conceived, reduced to practice or authored by CONSULTANT, or any persons provided by CONSULTANT either solely or jointly with others, in connection with the performance of the Work, including Services and Deliverables, related to the Current CITY System or the new CITY ERP System or otherwise under this Contract or with the use of any CITY Intellectual Property or any information, materials, equipment, data, systems or facilities of CITY received by CONSULTANT during the term of this Contract. CITY shall be free to make, have made, use, offer for sale, sell, modify, translate, and import products, services or systems, including

without limit the Current CITY System and the CITY ERP System, in whole or in part, utilizing the Intellectual Property created as a work for hire or otherwise assigned to CITY pursuant to this Contract. CONSULTANT shall promptly disclose to the CITY all Intellectual Property authored, created, made, licensed, procured or otherwise obtained by CONSULTANT or on behalf of CITY during the term of this Contract. CONSULTANT will execute or cause to be executed, all documents and perform such acts as may be necessary, useful or convenient to secure or enforce for CITY statutory protection including patent, trademark, trade secret or copyright protection throughout the world for all Intellectual Property assigned to CITY pursuant to this Section. In furtherance of the foregoing, CONSULTANT shall either: (i) provide CITY with a copy of a written agreement with each of its employees and independent contractors prior to their working hereunder through which all rights to Intellectual Property created, made, conceived, reduced to practice or authored by CONSULTANT's employees and independent contractors in the performance of this Contract are owned by CONSULTANT and thereby subject to the preceding assignment; or (ii) require that the employees and independent contractors it provides to perform the services under this Contract will execute an instrument assigning such Intellectual Property to CITY prior to commencing work under this Contract, and provide CITY with a copy (see Exhibit 7). No material produced in whole or in part under the Contract may be copyrighted, trademarked or patented, published or used in the United States or in any other country without the prior written approval of the CITY.

b. Consultant Pre-Existing Intellectual Property

CONSULTANT shall retain ownership of all intellectual property related to CONSULTANT's Services that CONSULTANT can clearly document by written evidence existing prior to the Effective Date as existed and being owned by CONSULTANT prior to the Effective Date of this Contract. CONSULTANT will not incorporate any CONSULTANT Pre-existing Internet Protocols (IP) into any Deliverables without the prior written approval of the CITY. To the extent that any CONSULTANT Pre-existing IP is incorporated into the Work, including any Services or Deliverable, with or without notice, CONSULTANT agrees that CITY shall have a perpetual, non-exclusive, royalty-free license to use such Consultant Pre-existing IP as needed to make or use any Deliverable or re-perform any of the Work or Services.

c. Indemnification

CONSULTANT agrees to and shall, at its sole expense, defend, protect, indemnify and hold harmless CITY, and its officers, directors, employees, contractors, and agents (each an "Indemnified Party") from, against and with respect to all demands, claims, causes of action, liability, judgments, damages, fines, or expenses (including reasonable attorney's fees and costs) suffered by, or threatened against an Indemnified Party as a result of, or in connection with: (i) CONSULTANT's unauthorized use of the CITY's Intellectual Property or unauthorized use or disclosure of the CITY's Confidential Information; (ii) any material breach of any term of this Contract including any representations or warranties by CONSULTANT, its officers, directors, contractors or agents; (iii) any and all gross negligence, malicious acts or willful misconduct of CONSULTANT; (iv) any Data breach caused in whole or part by CONSULTANT's acts, omissions, negligence or willful acts; or (v) by reason of any claim or allegations of infringement by a third party of any Intellectual Property right based on the Work, Services or Deliverables provided by CONSULTANT or use by CITY of such Services or Deliverables or any component of the ERP system arising from any recommendations of CONSULTANT, publicity right, defamation or slander of any person or entity arising from the services, or deliverables. This indemnity is not exclusive of other remedies that CITY has the discretion to seek. For the avoidance of doubt, and for

the purpose of absolute clarity as to the interpretation of this Contract, this indemnification provision is in addition to the ITN, Section V.B.4.

d. Contractor shall indemnify and hold harmless Owner, its officers and employees, from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the indemnifying party and persons employed or utilized by the Contractor in the performance of the Work.

In any and all claims against Owner or its officers, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 1.7.c shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

1.9 Sovereign Immunity

Nothing in the Contract shall be interpreted that the City waives its sovereign immunity granted under Section 768.28, Florida Statutes.

1.10 Payment

Payments will be due to the Contractor 30 days after receipt of a proper invoice; provided, however, that Contractor shall not submit more than one invoice per thirty-day period. Payment may be withheld by the City due to failure by the Contractor to comply with these specifications or because unacceptable equipment or materials were delivered as determined by the City's inspection. The City shall notify the Contractor of any unsatisfactory performance as soon as practicable so that it can be corrected without delaying payment if possible.

Contractor payment by City issued procurement card (currently VISA) is preferred. Otherwise, contractor will be paid electronically as an electronic funds transfer (EFT).

1.11 Acceptance of Delivery

Upon completion of the work, including any Services, Deliverables or portion thereof, or as otherwise agreed to, CONSULTANT shall present such product of the Services and/or Deliverables and will notify CITY of completion and provision of the Services, Deliverables or portion thereof. CITY will then determine whether the Services and/or Deliverables or any portion thereof are conforming and acceptable according to City's reasonable satisfaction, Consultant's obligations, and the requirements of any performance criteria or whether the Work, including the Services, Deliverables or any portion thereof are deficient or otherwise non-conforming. CITY will provide to Consultant a written notification of acceptance or rejection of any Work, which shall not serve as a waiver of any rights relating to any defects, deficiencies or failure of CONSULTANT to perform any Work, that are later found to be deficient, defective or non-conforming. If any of such Services or Deliverables, or any portion thereof, do not meet with CITY'S satisfaction and any obligations and performance criteria or specification, CONSULTANT agrees to cure the deficiency at CITY'S request and in CITY'S sole discretion for no additional compensation. In the event that CONSULTANT cannot deliver fully acceptable and complete Services, Deliverables or any portions therefore within an agreed time, or in the absence of an agreed time within a reasonable time as identified by CITY as its discretion, CITY shall have the right to (i) reject

and/or return any of all Services and/or Deliverables and be entitled to (i) *pro rate* refund or any payments made for the non-confirming, incomplete or defective Services, Deliverables or portion thereof; (ii) hire a third-party to complete or perform the Work, including Services and Deliverables or any portion thereof and claim a set-off from compensation and/or charge Consultant for any additional costs incurred by having to hire a third party to perform and/or complete such non-confirming Work, including Services and deliverables; and (iii) pursue all available legal and equitable remedies for such non-confirming performance, Services and Deliverables by Consultant under the Contract.

1.12 Prompt Payment Assurance

Late Payments by Contractors to Subcontractors and Material Suppliers Penalty

When a contractor receives from the City of Gainesville any payment for contractual services, commodities, materials, supplies, or construction contracts, the contractor shall pay such moneys received to each Subcontractor and Material Supplier in proportion to the percentage of Work completed by each Subcontractor and Material Supplier at the time of receipt. If the contractor receives less than full payment, then the contractor shall be required to disburse only the funds received on a pro rata basis with the Subcontractors and Material Suppliers, each receiving a prorated portion based on the amount due on the payment. If the contractor without reasonable cause fails to make payments required by this section to Subcontractors and Material Suppliers within 10 days after the receipt by the contractor of full or partial payment, the contractor shall pay to the Subcontractors and Material Suppliers a penalty in the amount of 1 percent of the amount due, per month, from the expiration of the period allowed herein for payment. Such penalty shall be in addition to actual payments owed. The Contractor shall include the above obligation in each subcontract it signs with a Subcontractor or Material Supplier.

1.13 Claim for Extra Payment or Change Order

If the Contractor claims that any instruction or change issued by the City involves extra cost, it shall so notify the City in writing within ten (10) days after receipt of such instruction and in any event secure approval before proceeding to execute the work.

1.14 Records/Audit

Contractor shall maintain records sufficient to document their completion of the scope of services established by this Contract. These records shall be subject at all reasonable time to review, inspect, copy and audit by persons duly authorized by the City. These records shall be kept for a minimum of three (3) years after completion of the Contract. Records which relate to any litigation, appeals or settlements of claims arising from performance under this Order shall be made available until a final disposition has been made of such litigation, appeals, or claims.

1.15 Public Records Law

Florida has a very broad public records law and certain records of a contractor may be considered public records. Accordingly, by entering into an agreement with the CITY, contractor must:

- a. Keep and maintain public records required by the public agency to perform the service.
- b. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if CONSULTANT does not transfer the records to the public agency.
- d. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of CONSULTANT or keep and maintain public records required by the public agency to perform the service. If CONSULTANT transfers all public records to the public agency upon completion of the contract, CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONSULTANT keeps and maintains public records upon completion of the contract, CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

In furtherance of the foregoing, CONSULTANT acknowledges that CITY is an "agency" as defined by Chapter 119, Florida Statutes, and is therefore obligated to comply with the Florida Public Records Law in such Chapter. Under such law CITY may be subject to statutory fines and penalties, including, but not limited to a requesting party's costs and attorney's fees, for not making public records available for inspection upon request. CONSULTANT and CITY shall cooperate with one another to protect Confidential Information which is a trade secret or which is otherwise confidential or exempt from disclosure under Chapter 119, Florida Statutes, and to provide witnesses to support the declarations and certification that the Confidential Information is a valid trade secret or is confidential, or exempt from disclosure under other applicable Florida law. CITY shall not be liable to CONSULTANT for any disclosure of Confidential Information which was or is disclosed pursuant to and in compliance with Florida law. CONSULTANT shall defend, at its own cost, indemnify, and hold harmless CITY, its officers, directors, employees, contractors, and agents from and against all claims, damages, losses, and expenses (including but not limited to fees and charges for attorneys or other professionals and court and arbitration or other dispute resolution costs) arising out of, or resulting from, CITY's protection of confidential information. For the avoidance of doubt, and for the purpose of absolute clarity as to the interpretation of this Contract, this indemnification provision is in addition to Exhibit 7.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS-DEPARTMENT PROJECT MANAGER, 352-393-XXXX, XXXXXXX@CITYOFGAINESVILLE.ORG, P.O. BOX 490 MAIL STATION 32, GAINESVILLE, FL 32627.

1.16 Notices.

Any notice required under this Contract shall be addressed as follows and delivered via US Post or express mail:

CITY
City of Gainesville
PO Box 490, Mail Station 32
Gainesville, FL 32627

CONSULTANT
TBD

Attn: Ginny Ahuja, Project Manager

All notices and other data required to be given by either party of this Contract if sent by mail, shall be deposited in the mails of the country of origin, postage prepaid, addressed to the other at the address set forth in this Section. Either party shall have the right to designate other or different addresses for the giving of notice by a notice given in accordance with the provisions of this Section. Any notice, direction or other communication given in accordance with this Section is deemed to have been given and received on the day of delivery, if delivered, or on the day of sending if sent by email or fax. Any notice, direction or other communication given in accordance with this Section, if mailed or sent by registered mail, is deemed to have been given and received on the fifth (5th) day following the day on which it was mailed, if so mailed in the United States.

1.17 Data Security and Breach

CONSULTANT represents and warrants that its collection, access, use, storage, disposal and disclosure of personal information of CITY Personnel or any other personal data of individuals in which Consultant is given access, if any, including without limit, the personal information of the officers, elected officials, or residents of the City of Gainesville (collectively “**Personal Information**”) does and will comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations and directives. Without limiting the foregoing, CONSULTANT shall implement administrative, physical and technical safeguards to protect Personal Information that are no less rigorous than accepted industry practices, and shall ensure that all such safeguards, including the manner in which Personal Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement. CONSULTANT shall be liable for any data Security Breach (as defined below) caused or arising from the collection, access, use, storage, disposal or disclosure by the CONSULTANT, including CONSULTANT’s acts, omissions, negligence or willful acts.

1.18 Security Breach Procedures

CONSULTANT shall: (i) provide CITY with the name and contact information for an employee of CONSULTANT who shall serve as CITY’s primary security contact and shall be available to assist CITY twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a security breach in which Personal Information of Confidential Information is accessed (each a “**Security Breach**”); and (ii) notify CONSULTANT’s primary business contact within CITY of each Security Breach as soon as practicable, but no later than twenty-four (24) hours after CONSULTANT becomes aware of such Security Breach. Immediately following CONSULTANT’s notification to CITY of a Security Breach, the Parties shall coordinate with each other to investigate the Security Breach. CONSULTANT agrees to reasonably cooperate with CITY in CITY’s handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing CITY with physical access to the facilities and operations affected; (iii) facilitating interviews with CONSULTANT’s employees and others involved in the matter; and (iv) making available all relevant records, logs, files, data reporting and other materials required to comply with, regulation, industry standards or as otherwise reasonably required by CITY.

1.19 Representations and Warranties of Consultant

CONSULTANT represents and warrants to CITY that:

a. CONSULTANT's services will be performed in a workmanlike and professional manner and all Services, Deliverables, equipment, materials and reports furnished will be as represented by CONSULTANT, suitable for CITY's purposes and in conformance with CITY's standards and any performance criteria provided to CONSULTANT;

b. CONSULTANT has the right to enter into and fully perform this Contract; and no Services, Deliverables, service, equipment, designs, recommendations, data, materials or reports created used, made, licensed obtained, or procured by CONSULTANT or provided or furnished to CITY will in any way infringe upon or violate any applicable law, rule or regulation, any contract with a third party, any patent, trade secret, trademark or copyright or other or proprietary intellectual property rights or any rights of any third person, including, without limitation any rights of privacy or publicity rights.

c. CONSULTANT has the experience and ability in the fields of information technology or in such other fields and related disciplines as may be necessary to perform all required services with a high standard of quality;

d. With respect to all individuals it provides to perform the services required under this Contract, CONSULTANT will make all appropriate tax payments and tax withholding and will verify such individuals as being legally able to work in the United States; and

e. With respect to all dealings with CITY and members of the public related to this Contract, CONSULTANT will be governed by the highest standards of honesty, integrity, fair dealing, and ethical conduct and will do nothing which would tend to discredit, dishonor, reflect adversely upon, or in any manner injure the reputation of the CITY.

1.20 DISCLAIMER OF REPRESENTATIONS AND WARRANTIES BY CITY

OTHER THAN AS MAY BE EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT ALLOWABLE BY APPLICABLE LAW, CITY HEREBY DISCLAIMS ALL WARRANTIES RELATED TO THE DATA, INFORMATION, REPORTS AND MATERIALS ABOUT THE CURRENT CITY SYSTEMS, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. OTHER THAN AS EXPLICITLY SET FORTH HEREIN, ALL SUCH DATA, INFORMATION, REPORTS AND MATERIALS ABOUT THE CURRENT CITY SYSTEMS IS PROVIDED ON AN "AS IS" BASIS.

1.21 LIMITATION OF LIABILITY

IN NO EVENT WHATSOEVER WILL CITY HAVE LIABILITY OF ANY KIND TO CONSULTANT FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF THE THEORY UNDER WHICH THEY ARE PURSUED FOR ANY CLAIMS UNDER THIS CONTRACT. CITY'S MAXIMUM LIABILITY TO CONSULTANT UNDER THIS AGREEMENT SHALL IN THE AGGREGATE NOT EXCEED THE FEES PAYABLE TO CONTRACTOR UNDER THIS CONTRACT.

1.22 Dispute Resolution

a. **Informal Negotiation.** In the event of any dispute arising out of or relating to this Contract, the parties shall give notice of the dispute and informal negotiations, and attempt in good faith to resolve the matter. If the parties cannot resolve the matter, the dispute will be elevated to the City Manager and the CEO of CONSULTANT who will attempt in good faith to resolve the matter within three (3) weeks after the date of such notice. If such efforts do not result in a resolution of the dispute, then the Parties will undertake the process outlined in Section 7.13, below.

b. **Mediation; Arbitration.**

i) Any dispute, claim, or controversy arising from or relating to this Contract or the breach of this Contract that is not resolved by informal negotiations of Section 7.13a, above, and not excluded from this Section 7.13 shall be first submitted for mediation by one mediator under Florida Rules of Civil Procedure applicable to mediation, to be conducted in Alachua County, Florida.

ii) If the matter is not resolved through mediation within sixty (60) days, then upon written notice by either Party to the other, the dispute, claim, or controversy shall be submitted to binding arbitration administered in accordance with the Judicial Arbitration and Mediation Services, to be conducted in Alachua County, Florida no sooner than sixty (60) days and not later than one hundred and twenty (120) days from service of the notice. All defenses and claims which would otherwise be available to the Parties in any court proceeding shall be available in arbitration, including, without limitation, all applicable statutes of limitations. Judgment upon any award rendered in such arbitration will be final and binding on the Parties and may be entered in any court having jurisdiction thereof.

iii) The Parties shall initiate and participate in the mediation and arbitration proceedings in good faith and shall cooperate to ensure that the proceedings are completed expeditiously. The fees and expenses of the mediation and arbitration (including the fees of the mediator and arbitrator) shall be shared equally by the Parties. Each Party shall pay its own expenses (including attorneys' fees and costs and expenses of preparation and presentation of proofs), except that the prevailing Party in any arbitration proceeding shall be entitled to an award of reasonable attorneys' fees and costs, as determined by the arbitrator. Except as expressly provided in this Section 7.13, the mediation and arbitration provided herein shall be the sole means by which such disputes, claims, and controversies shall be resolved, and each Party waives its right to initiate judicial proceedings, including without limitation a trial by jury.

iv) Notwithstanding the foregoing, either Party may initiate and prosecute an action in court (a) to enforce its rights to indemnification under this Agreement, or (b) to obtain an injunction or other equitable relief to protect its Intellectual Property rights or Confidential Information.

1.23 Independent Contractor

The CONSULTANT shall be considered an independent contractor and as such shall not be entitled to any wages, rights, or benefits to which CITY employees are or may be entitled to by reason of employment. Except as specifically noted in the Contract, the CONSULTANT shall be solely responsible for the means, method, techniques, sequences, and procedures utilized by the CONSULTANT in the full performance of the Contract. CONTRACTOR is solely responsible for supplying its own tools necessary to fulfill the Contract. This Contract does not cause or create any joint venture or partnership.

1.24 Entire Agreement; Amendment

This Contract contains the entire agreement between the Parties as to the subject matter hereof supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof. Any amendments or modifications to this Contract shall be in writing and executed by both Parties.

a. Interpretation. This Contract shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by one of the parties. It is recognized that both parties have substantially contributed to the preparation of this Contract.

b. Third-Party Beneficiaries. This Contract does not create any relationship with, or any rights in favor of, any third party.

c. Severability. In the event that any one or more provisions of this Contract shall for any reason be held to be invalid, illegal or unenforceable, any such invalid, illegal or unenforceable provision shall be treated as modified to the least extent necessary to rectify its invalidity, illegality or unenforceability, and shall be enforced as so modified. If no feasible modification shall save such provision, it will be severed from the remainder of this Contract, as appropriate. The remaining provisions of this Contract shall be unimpaired, and remain in full force and effect.

d. Governing Law; Jurisdiction; Venue. This Contract and the legal relationship between the Parties shall be governed and construed in accordance with the laws of the State of Florida, without regard to its conflicts of law provisions. The parties agree to, and do hereby, submit to the exclusive jurisdiction of the state or federal courts of competent jurisdiction sitting in the State of Florida to hear and resolve disputes arising out of, or related to this Contract, and agree that the exclusive venue for all such actions shall be in Alachua County, Florida.

e. Successors and Assigns. This Contract shall be binding upon and inure to the benefit of the parties and to each of their permitted successors and assigns.

f. Survival. All provisions of this Contract that involve rights and obligations which by their nature contemplate or could reasonably contemplate future privileges or restrictions, including but not limited to CONSULTANT's representations and warranties, confidentiality and non-disclosure obligations and indemnity obligations, survive the termination, expiration, cancellation, or other ending of this Contract.

g. Assignment. CONSULTANT may not assign its rights or obligations under this Contract without first obtaining the prior written consent of CITY. For the purposes herein, any merger, acquisition, or change in control of fifty percent (50%) or more of the voting control of CONSULTANT shall be considered an assignment pursuant to this provision, and as such, prior written consent shall be required to transfer this Contract to the resulting entity, even if the same after such acquisition, merger, or change of control. In addition, any change to CONSULTANT which results in the reassignment or removal of Personnel used in the presentation and other materials presented by CONSULTANT to CITY in furtherance of the bidding process of this Contract, shall further be considered an Assignment. In the event CITY refuses to allow assignment of this Contract hereunder, for any reason or no reason, this Contract shall terminate immediately. CITY may assign its rights or obligations under this Contract at any time without the consent of CONSULTANT.

1.25 Headings. The headings in this Contract are for the purpose of convenience only. They are not intended to be a material part of the Contract, and in the event of any conflict between the heading and the text, the text shall govern.

1.26 Waiver. A failure of either party to enforce at any time any of the provisions of this Contract, or to require at any time performance of any of the provisions hereof, shall in no way affect the full right to require such performance at any time thereafter. No waiver shall be deemed a waiver of any other breach, or any other term or condition thereof.

1.27 Counterparts; Electronic Signatures. This Contract may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signatures to this Contract may be exchanged by electronic means and shall have the same legal effect as the exchange of original signatures.

1.28 Time is of the Essence. The CONTRACTOR and the CITY further agree that time is of the essence of the Contract and that the work under the Contract is required to be completed within the time specified in the Contract Documents.