

## **ATTACHMENT K**

### **ADDITIONAL SPECIAL CONTRACT CONDITIONS**

**The following terms supersede or add to the Special Contract Conditions as indicated below.**

**Subsection 7.3 of the Special Contract Conditions is replaced in its entirety by the following:**

#### 7.3 Indemnification.

Notwithstanding, any other provision in the Contract, the State of Florida and Customers do not indemnify the Contractor or any other person for any liabilities related to this Contract.

Nothing in this Contract shall constitute a waiver of sovereign immunity or consent by the Customer or the State of Florida or its subdivisions to suit by third parties.

The Contractor shall provide indemnification as set forth in Subparagraphs 7.3.1-7.3.3 below. These indemnifications by the Contractor, with respect to any legal action, are contingent upon the State of Florida or Customer giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State of Florida or Customer in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.

These indemnification obligations do not apply if the Contractor is a governmental entity, prohibited by law, or constrained by lack of legal authority, from indemnifying the State of Florida, Customer, or other party. In such instances, the Contractor shall remain liable for the Contractor's own actions and those of its agents, employees, partners, or subcontractors to the extent that such liability exists in the absence of the legally impermissible indemnification.

#### 7.3.1 Personal Injury and Damage to Real or Tangible Personal Property.

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

### 7.3.2 Intellectual Property Liability.

The Contractor shall be fully liable for the actions of its agents, employees, partners, and subcontractors and shall fully indemnify, defend, and hold harmless the State of Florida and Customers, including their officers, employees, and agents, from any suits, actions, damages, fines, claims, assessments, attorney's fees, and costs of every name and description, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or other intellectual property right.

This intellectual property liability indemnification obligation shall not apply to a Customer's misuse or modification of Contractor's products or a Customer's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order. If any product is the subject of an infringement suit, or in the Contractor's opinion, is likely to become the subject of such a suit, the Contractor shall, at its sole expense, procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the Contractor shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The State of Florida and Customer shall not be liable for any royalties.

### 7.3.3 Other Indemnifications.

The Contractor shall be fully liable for the actions of its agents, employees, partners, and subcontractors and shall fully indemnify, defend, and hold harmless the Customer and the State of Florida, and their officers, agents, and employees from any suits, actions, damages, and costs of every name and description, including attorneys' fees arising from or relating to, in whole or in part, a violation by the Contractor, its agents, employees, partners, or subcontractors of Sections 9 and 13 below. In addition to any other remedies applied, the Contractor shall provide credit monitoring services at its own cost for those individuals affected by a breach of these duties for a two-year period of time following the breach.

**Subsection 8.4 of the Special Contract Conditions is replaced in its entirety by the following:**

### 8.4. Intellectual Property.

Unless specifically addressed in the Contract, intellectual property rights to all Deliverables created by the Contractor specifically for the Department will be owned by the State of Florida through the Department at the completion of the Contract upon Contractor's receipt of payment in full for the applicable Deliverables.

Any Deliverables developed specifically for the Department in the course of or as a result of services performed under the Contract which are patentable pursuant to 35 U.S.C. §101 are, upon payment in full of the applicable Deliverables, the sole property of the state of Florida. Contractor must inform the Department of any inventions or discoveries developed or made in connection with the Contract and will be referred to the Florida Department of State for a determination on whether patent protection will be sought for the invention or discovery. The State of Florida will be the sole owner of any and all patents resulting from any invention or discovery made in connection with this contract.

Contractor must notify the Department of State in the event any Deliverable contains any publications, artwork, or other copyrightable works developed in connection with the Contract. All Deliverables containing any copyrights created or developed by the Contractor specifically for the Department in connection with the Contract are, upon payment in full for the applicable Deliverable, the sole property of the State of Florida.

Notwithstanding anything to the foregoing, the Department acknowledges and agrees that the Contractor retains all right, title, and interest to materials, including, but not limited to, software applications, templates, processes, methodologies or documentation, that may be provided to the Department, including by way of incorporation into a Deliverable, and that the Contractor (i) developed prior to the execution of the applicable purchase order or statement of work, or (ii) develops during the course of a purchase order or statement of work, but that either (a) is developed at the Contractor's sole cost outside of the scope of Services provided under this Agreement, or (b) is generic in nature and used generally in the software, advertising or digital industries.

The Department acknowledges and agrees that the Contractor may obtain materials from third parties in performing its obligations hereunder ("Third Party Materials"). Any Third Party Materials and intellectual property owned by third parties and provided to the Department will remain the sole and exclusive property of such third parties or the Contractor, as subject to their applicable license terms.

**Section 9 of the Special Contract Conditions is replaced in its entirety by the following:**

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

### **9.1 Duty to Provide Secure Data.**

In providing the services under the Contract, the Contractor will maintain the security of State of Florida data and will also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information.

### **9.2 Warranty of Security**

Unless otherwise agreed in writing, the Contractor and its subcontractors will not perform any of the services from outside of the United States, and the Contractor will not allow any State of Florida data to be sent by any medium, transmitted, or accessed outside of the United States.

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

### 9.3 Notification of Data Breach.

In addition to the requirements of section 501.171, F.S., the Contractor must notify the Customer within one (1) business day in the event Contractor discovers any data is breached, any unauthorized access of data occurs (even by persons or companies with authorized access for other purposes), or any unauthorized transmission of data occurs. This notification is required regardless of the number of persons or type of data affected. The notification must be clear and conspicuous and include a description of the following:

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

However, the description of those actions in the written notice may be general so as not to further increase the risk or severity of the breach. In addition to the notification provided for in this section, the Contractor must set up a conference call with the Customer, providing sufficient notice for Customer personnel to be available for the call.

### 9.4 Remedial Measures.

Once a data breach has been contained, the Contractor must provide the Customer with a post-incident report documenting all containment, eradication, and recovery measures taken. The Department reserves the right in its sole discretion to enlist a third party to audit Contractor's findings and produce an independent report. The Contractor will fully cooperate with the third party.

### 9.5 Annual Certification.

The Contractor is required to submit an annual certification demonstrating compliance with the Warranty of Security to the Customer by December 31 of each Contract year.

**Section 13 of the Special Contract Conditions is replaced in its entirety by the following:**

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

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

### 13.1 Background Screening.

In addition to any background screening required by the Contractor as a condition of employment, the Contractor warrants that it will conduct a criminal background screening of, or ensure that such a screening is conducted for, each of its employees, subcontractor personnel, independent

contractors, leased employees, volunteers, licensees or other person, hereinafter referred to as "Person" or "Persons," operating under their direction who directly perform services under the Contract, whether or not the Person has access to State of Florida Data, as well as those who have access, including indirect access, to State of Florida Data, whether or not they perform services under the Contract. The Contractor warrants that all Persons will have passed the Background Screening described herein before they have Access to Data or begin performing services under the contract. The look-back period for such background screenings shall be for a minimum of six (6) years where six (6) years of historical information is available.

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

"Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions, whether it is exempt, confidential, or personal health information. Data may be in any form, including but not limited to, storage media, computer memory, in transit, presented on a display device, or in physical media such as paper, film, microfilm, or microfiche. Data includes the original form of the Data and all metadata associated with the Data.

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

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

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

Notwithstanding the foregoing, the Department acknowledges that there may be constraints on the Contractor's ability to meet the minimum background check process for Persons outside of the United States. In such event, Contractor will perform background checks as consistent with the above process to the fullest extent possible in the applicable local jurisdiction.

#### 13.1.1 Disqualifying Offenses.

If at any time it is determined that a Person has a criminal misdemeanor or felony record regardless of adjudication (e.g., adjudication withheld, a plea of guilty or nolo contendere, or a guilty verdict) within the last six (6) years from the date of the court's determination for the crimes listed below, or their equivalent in any jurisdiction, the Contractor is required to immediately remove that Person from any position with access to State of Florida Data or directly performing services under the Contract. The disqualifying offenses are:

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

If the Contractor finds a Disqualifying Offense for a Person within the last six (6) years from the date of the court's disposition, it may obtain information regarding the incident and determine whether that Person should continue providing services under the Contract or have access to State of Florida Data. The Contractor will consider the following factors only in making the determination: i.) nature and gravity of the offense, ii.) the amount of time that lapsed since the offense, iii.) the rehabilitation efforts of the person and iv.) relevancy of the offense to the job duties of the Person. If the Contractor determines that the Person should be allowed access to State of Florida Data, then Contractor shall maintain all criminal background screening information and the rationale for such access in the Person's employment file.

#### 13.1.2 Refresh Screening.

The Contractor will ensure that all background screening will be refreshed every five (5) years from the time initially performed for each Person during the Term of the Contract

#### 13.1.3 Self-Disclosure.

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

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

#### 13.2 Department's Ability to Audit Background Screening Compliance.

The Department reserves the right to audit the Contractor's background screening process and documentation upon two (2) days prior written notice to the Contractor during the Term of the Contract.

### 13.3 Record Retention.

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

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

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

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

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

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

### 13.4 E-Verify.

In accordance with Executive Order 11-116, the Contractor agrees to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of the Contract for the services specified in the Contract. The Contractor must also include a requirement in subcontracts that the subcontractor must utilize the E-Verify

system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term. In order to implement this provision, the Contractor must provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five (5) calendar days of Contract execution. If the Contractor is not enrolled in DHS E-Verify System, it will do so within five (5) calendar days of notice of Contract award, and provide the Contract Manager a copy of its MOU within five (5) calendar days of Contract execution. The link to E-Verify is <https://www.uscis.gov/e-verify>. Upon each Contractor or subcontractor new hire, the Contractor must provide a statement within five (5) calendar days to the Contract Manager identifying the new hire with its E-Verify case number.

### 13.5 Confidentiality.

The Contractor must maintain confidentiality of all confidential data, files, and records related to the services and/or commodities provided pursuant to the Contract and must comply with all state and federal laws, including, but not limited to sections 381.004, 384.29, 392.65, and 456.057, F.S. The Contractor's confidentiality procedures must be consistent with the most recent version of the Department security policies, protocols, and procedures. The Contractor must also comply with any applicable professional standards with respect to confidentiality of information.