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Ron DeSantis, Governor

Jonathon R. Satter, Secretary

ATTACHMENT B

DRAFT CONTRACT

FOR

SUNCOM COMMUNICATIONS SERVICES

CONTRACT NO: DMS-17/18-004

BETWEEN

THE STATE OF FLORIDA

DEPARTMENT OF MANAGEMENT SERVICES

AND

<<PARTY NAME>>

DRAFT CONTRACT

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Exhibits:

Exhibit A – Request for Best and Final Offer to ITN DMS-17/18-004;

Exhibit B – Contractor's Best and Final Offer to ITN DMS-17/18-004;

Exhibit C – ITN DMS-17/18-004 including all attachments and any addenda in reverse order of issuance

This Contract is between the STATE OF FLORIDA, DEPARTMENT OF MANAGEMENT SERVICES (Department), an agency of the State of Florida with offices at 4050 Esplanade Way, Tallahassee, Florida 32399-0950, and <INSERT VENDOR NAME> (Contractor) with offices at <insert address>, each a “Party” and collectively referred to herein as the “Parties”.

The Parties enter into this Contract (hereinafter “the Contract”) in accordance with Chapters 282 and 287, Florida Statutes, and with the negotiated terms and conditions of Invitation to Negotiate, DMS-17/18-004 SUNCOM Communication Services.

SECTION 1. CONTRACT TERM AND TERMINATION

1.1 Initial Term

The initial term of the Contract will be five (5) years and will begin on the date the Contract is signed by all Parties.

1.2 Renewal

Upon written agreement, the Department and the Contractor may renew the Contract in whole or in part for up to five (5) renewal years in accordance with section 287.057(13), F.S., and Rule 60A-1.048, Florida Administrative Code (F.A.C.).

1.3 Transition Services

The Contractor will be required to perform transition services, which may take place at any time during the Contract term. The complete transition of existing services to replacement services or to replacement contracts is hereby explicitly made a criterion for completing the Contract.

As part of transition services, the Contractor shall:

- i) Provide sufficient efforts and cooperation to ensure an orderly and efficient transition of services to any replacement contract.
- ii) Deliver to the Department upon request, whether or not previously made available, the following on an as-needed basis:
 - a. Current operations guides and procedures the Contractor follows to provide the services; and
 - b. A disclosure of the equipment, software, and third-party contract services required to perform the services.
- iii) Assist the Department with migration of databases of information as needed.
- iv) Assist the Department with the installation of network-to-network connections to facilitate continuity for SUNCOM Communication Services (SCS) sites. Network-to-network connections shall be paid for by the Department at the current contract pricing.
- v) Promptly answer all questions related to the transition and migration of the SCS, upon request.
- vi) To the extent possible, provide such other services, functions, or responsibilities inherent or necessary to the transition of existing SCS to a replacement contract, provided that such services, functions, or responsibilities are limited to that which can be delivered with the then current Contractor team staffing and subcontractors, if required.

1.4 Suspension of Work and Termination

1.4.1 Suspension of Work

The Department may, at its sole discretion, suspend any or all activities under the Contract, at any time, when it is in the best interest of the State of Florida to do so. The Department may, at its sole discretion, suspend the Contract at any time, when in the best interest of the Department or Customer to do so. The Department or the Customer will provide the Contractor written notice outlining the particulars of suspension and the effective date of the suspension. After receiving a suspension notice, the Contractor must comply with the notice and will cease the activities associated with the Contract, . Within ninety (90) days, or any longer period agreed to by the Contractor, the Department will either (1) issue a notice authorizing resumption of work, at which time activity will resume, or (2) terminate the Contract.. Suspension of work will not entitle the Contractor to any additional compensation.

1.4.2 Termination for Convenience

The Contract may be terminated by the Department in whole or in part at any time, when it is in the best interest of the State of Florida. If the Contract is terminated before performance is completed, the Contractor will be paid only for that work satisfactorily performed, prior to the termination, for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the Contract price as the amount of work satisfactorily performed. All work in progress will become the property of the Customer and will be turned over promptly by the Contractor.

1.4.3 Termination for Cause

If the performance of the Contractor is not in compliance with the Contract requirements or the Contractor has defaulted, the Department may, at its sole discretion, (a) immediately terminate the Contract, (b) notify the Contractor of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Contract will terminate at the end of such time, or (c) take other action deemed appropriate by the Department.

1.4.4 Termination Assistance

In case of termination, whether for cause or for convenience, the Contractor will provide prompt and thorough transition assistance and cooperation, including as specified in Section 3.46 of the Statement of Work, and subsection 1.3 of the Contract.

SECTION 2. CONTRACT DOCUMENTS AND HIERACHY

The Contract sets forth the entire understanding of the Parties and consists of the documents listed below. In the event any of these documents conflict, the conflict will be resolved in the following order of priority (highest to lowest):

1. This Contract document;
2. Exhibit A – Request for Best and Final Offer to ITN DMS-17/18-004;
3. Exhibit B – Contractor's Best and Final Offer to ITN DMS-17/18-004;
4. Exhibit C – ITN DMS-17/18-004 including all attachments and any addenda in reverse order of issuance

In accordance with Rule 60A-1.002(7), F.A.C., Form PUR 1000, is included herein by reference, but is superseded in its entirety by the Contract.

SECTION 3. PAYMENT AND FEES

3.1 Pricing

During the term of the Contract (including renewal years), the prices offered by the Contractor will not exceed the pricing set forth in Exhibit B – Contractor’s Best and Final Offer to ITN DMS-17/18-004.

3.2 Price Adjustments

During the term of the Contract (including renewal years), the Department encourages the Contractor to offer price decreases that are in line with increased efficiencies and added infrastructure enhancements. The Department reserves the right to further negotiate reduction in pricing for the renewal years.

3.3 Price Decreases

The following price decrease terms will apply to the Contract:

(a) Volume Discounts. Contractor may offer additional discounts for one-time delivery of large single orders.

(b) Preferred Pricing. The pricing indicated in the Contract is guaranteed, by the Contractor, to be a maximum price. Additionally, Contractor’s pricing will not exceed the pricing offered under comparable contracts. Comparable contracts are those that are similar in size, scope and terms. In compliance with section 216.0113, F.S., Contractor must annually submit an affidavit from the Contractor’s authorized representative attesting that the Contract complies with this clause.

(c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor must submit documentation identifying the proposed (1) starting and ending dates of the promotion, (2) commodities or contractual services involved, and (3) promotional prices compared to then-authorized prices.

3.4 Purchase Order (CSA)

A Customer may use purchase orders, including Communication Service Authorizations, (CSAs), to buy commodities or services pursuant to the Contract. The Department may also execute purchase orders or CSAs on behalf of Customers. The Contractor must provide commodities or services pursuant to purchase orders or CSAs. The purchase order or CSA period of performance survives the expiration of the Contract. All terms and conditions of the Contract will be incorporated into the purchase orders or CSAs and will survive the termination of the Contract. The duration of purchase orders or CSAs must not exceed the expiration of the Contract by more than twelve (12) months, unless they’ve been entered into pursuant to an Extended Pricing Plan, in which case they may not exceed the expiration of the Contract by more than thirty-six (36) months. Extended Pricing Plans are discounted prices offered in exchange for a Customer’s commitment to lease commodities or purchase contractual services for an extended time.

3.5 Payment Invoicing

The Contractor will be paid upon submittal of an invoice to the Department after delivery and acceptance of commodities or contractual services is confirmed, and the invoice is accepted by the Customer. The Contractor shall submit invoices for fees or other compensation for services or expenses in detail sufficient enough for a proper pre-audit and post-audit and contain the Contract Number and the Contractor's Federal Employer Identification Number. The Department reserves the right to request additional documentation as needed and Contractor will follow all invoice directives in the Statement of Work.

3.6 Service Level Agreement

The damages resulting to the Department or Customer(s) from violations of SLAs 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 are solely intended to compensate for unknown and unascertainable damages. The Contractor therefore agrees to credit the Department consistently with the Contract, including as set forth in Attachment C - Service Level Agreements.

3.7 Travel

Travel expenses are not reimbursable unless specifically authorized by the Customer in writing, and may be reimbursed only in accordance with section 112.061, F.S.

3.8 Annual Appropriation

Pursuant to section 287.0582, F.S., if the Contract binds the State of Florida or an agency for the purchase of services or tangible personal property for a period in excess of one (1) fiscal year, the State of Florida's performance and obligation to pay under the Contract is contingent upon an annual appropriation by the Legislature.

3.9 Transaction Fees

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to section 287.057(22), Florida Statutes. All payments issued by Customers to registered Vendors for purchases of commodities or contractual services will be assessed Transaction Fees as prescribed by rule 60A-1.031, Florida Administrative Code, or as may otherwise be established by law. Vendors must pay the Transaction Fees and agree to automatic deduction of the Transaction Fees, when automatic deduction becomes available. Vendors will submit any monthly reports required pursuant to the rule. All such reports and payments will be subject to audit. Failure to comply with the payment of the Transaction Fees or reporting of transactions will constitute grounds for declaring the Vendor in default and subject the Vendor to exclusion from business with the State of Florida.

3.10 Taxes

Taxes, customs, and tariffs on commodities or contractual services purchased under the Contract will not be assessed against the Customer unless authorized by Florida law.

3.11 Return of Funds

Contractor will return any overpayments due to unearned funds or funds disallowed pursuant to the terms of the Contract that were disbursed to the Contractor by the Department or Customer. The Contractor must return any overpayment within forty (40) calendar days after either discovery by the Contractor, its independent auditor, or notification by the Department or Customer of the overpayment.

SECTION 4. CONTRACT ADMINISTRATION

4.1 Department's Contract Administrator

The Department's Contract Administrator, whose primary responsibility will be to maintain the Contract file, is as follows:

Caitlen Boles
Departmental Purchasing
Florida Department of Management Services
4050 Esplanade Way, Suite 335.2Y
Tallahassee, Florida 32399-0950
Telephone: (850) 410-1423
Email: caitlen.boles@dms.myflorida.com

In the event that the Department changes the Department's Contract Administrator, the Department will notify the Contractor's Contract Manager in writing via email, and document such in the Contract file. Such changes do not require a formal written amendment to the Contract.

4.2 Department's Contract Manager

The Department's Contract Manager, who is primarily responsible for enforcing the performance of the Contract terms and conditions and will serve as a liaison with the Contractor will be as follows:

Camila Hornung
Division of Telecommunications
4030 Esplanade Way, Suite 170-I
Tallahassee, Florida 32399-0950
Telephone: (850) 487-1805
Email: camila.hornung@dms.myflorida.com

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

4.3 Contractor's Contract Manager

The Contractor's Contract Manager, who is primarily responsible for the Contractor's oversight of the Contract performance, will be identified in a separate writing to the Department upon Contract signing in the following format:

Jane Doe
<Insert Contractor name>
<Insert Contractor's physical address>
Telephone: (XXX) 555-XXXX

Email: jane.doe@xxxxx.com

In the event that the Contractor changes its Contract Manager, the Contractor will notify the Department's Contract Manager in writing via email. Such a change does not require an amendment to the Contract.

4.4 Contractor's Account Manager

The Contractor's Account Manager, who will serve as a liaison with the Department's Contract Administrator, will be identified in a separate writing to the Department upon Contract signing in the following format:

Jane Doe
<Insert vendor name>
<Insert vendor physical address>
Telephone: (850) XXX-XXXX
Email: jane.doe@xxxxxx.com

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

SECTION 5. CONTRACT MANAGEMENT

5.1 Composition and Priority

The Contractor agrees to provide commodities or contractual services within the manner and at the location specified in the Contract and any exhibits to the Contract. Additionally, the terms of the Contract supersede the terms of any and all prior or contemporaneous agreements between the Parties.

5.2 Notices

All notices required under the Contract must be delivered to the designated Contract Manager by certified mail, return receipt requested, reputable air courier service, email, or personal delivery, or as otherwise identified by the Department.

5.3 Operational Changes

The Department's Contract Manager may authorize operational changes to services and infrastructure that do not have a pricing impact (non-billable changes). Such authorized operational changes do not require a contract amendment, but will be memorialized in writing and placed in the Contract Managers' files. The Department reserves the right to make the final determination if a change request or contract amendment is required. Any change that would allow the Contractor to offer less of any deliverable, including commodities, services, technology, or software, requires a contract amendment. Service Catalog updates must be made in accordance with the process within the SOW section 1.5 and may not require an Operational Change.

5.4 Diversity Reporting

The State of Florida supports its diverse business community by creating opportunities for woman-, veteran-, and minority-owned small business enterprises to participate in procurements and contracts. The Department encourages supplier diversity through certification of woman-, veteran-, and minority-owned small business enterprises, and provides advocacy, outreach, and networking through regional business events. For

additional information, please contact the Office of Supplier Diversity (OSD) at osdinfo@dms.myflorida.com.

Upon request, the Contractor will report to the Department its spend with business enterprises certified by the OSD. These reports must include the time period covered, the name and Federal Employer Identification Number of each business enterprise utilized during the period, commodities and contractual services provided by the business enterprise, and the amount paid to the business enterprise on behalf of each Customer purchasing under the Contract.

5.5 RESPECT

Subject to the agency determination provided for in Section 413.036, F.S., the following statement applies:

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

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

5.6 PRIDE

Subject to the agency determination provided for in Sections 946.515 and 287.042(1), F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES WHICH ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM THE CORPORATION IDENTIFIED UNDER CHAPTER 946, F.S., IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 946.515(2) AND (4), F.S.; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THIS AGENCY INsofar AS DEALINGS WITH SUCH CORPORATION ARE CONCERNED.

Additional information about PRIDE and the commodities or contractual services it offers is available at <http://www.pride-enterprises.org>.

SECTION 6. COMPLIANCE WITH LAWS

6.1 Conduct of Business

The Contractor must comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal,

state, and local agencies having jurisdiction and authority, including but not limited to, Chapters 282 and 287 of the Florida Statutes, Chapter 60FF of the Florida Administrative Code, the Communications Assistance for Law Enforcement Act, the Payment Card Industry DSS, IRS Publication 1045, Section 274A of the Immigration and Nationality Act, the Americans with Disabilities Act, Health Insurance Portability and Accountability Act (HIPAA) (including executing any Business Associate Agreements as requested by Customers), if applicable, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status Pursuant to subsection 287.058(1), F.S., the provisions of subparagraphs 287.058(1)(a)-(c), and (g), F.S., are hereby incorporated by reference, to the extent applicable.

6.2 Dispute Resolution, Governing Law and Venue

Any dispute concerning performance of the Contract shall be decided by the Department's Contract Manager, who will reduce the decision to writing and serve a copy on the Contractor. The decision of the Department's Contract Manager shall be final and conclusive. Exhaustion of this administrative remedy is an absolute condition precedent to the Contractor's ability to pursue legal action related to the Contract or any other form of dispute resolution. The laws of the State of Florida govern the Contract. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to the Contract. Further, the Contractor hereby waives any and all privileges and rights relating to venue it may have under Chapter 47, F.S., and any and all such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those based on convenience. The Contractor hereby submits to venue in the county chosen by the Department.

6.3 Department of State, Registration

Consistent with Chapters 605 through 623, F.S., the Contractor and any subcontractors that assert status, other than a sole proprietor, must provide the Department with conclusive evidence of a certificate of status, not subject to qualification, if a Florida business entity, or of a certificate of authorization if a foreign business entity.

6.4 Suspended, Convicted, and Discriminatory Vendor Lists

In accordance with sections 287.042, 287.133, and 287.134, F.S., an entity or affiliate who is on the Suspended Vendor List, Convicted Vendor List, or the Discriminatory Vendor List may not perform work as a contractor, supplier, subcontractor, or consultant under the Contract. The Contractor must notify the Department if it or any of its suppliers, subcontractors or consultants have been placed on the Suspended Vendor List, Convicted Vendor List or the Discriminatory Vendor List during the term of the Contract.

6.5 Scrutinized Companies—Termination by the Department

The Department may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), F.S., or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

6.6 Cooperation with Inspector General and Records Retention

Pursuant to subsection 20.055(5), F.S., Contractor, and any subcontractor to the Contractor, understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the

Inspector General or any other authorized State official, the Contractor must provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but will not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor will retain such records for five (5) years after the expiration of the Contract, or the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>), whichever is longer. The Contractor agrees to reimburse the State of Florida for the reasonable costs of investigation incurred by the Inspector General or other authorized State of Florida official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State of Florida which results in the suspension or debarment of the Contractor. Such costs will include, but will not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees.

6.7 Inspection

Section 215.422, F.S., shall govern inspection and approval of goods and services.

SECTION 7. MISCELLANEOUS

7.1 Warranty of Contractor's Ability to Perform

The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the Suspended Vendor List, Convicted Vendor List, Discriminatory Vendor List, or on any similar list maintained by any other state or the federal government.

The Contractor shall notify the Department of any regulatory or legal actions filed by any federal, state, or local government entity and any other litigation that could impact the Contractor's ability to perform under the Contract within thirty (30) days of the action being filed. The Contractor must notify the Department of any legal actions filed against it for a breach of a contract of similar size and scope to this Contract within thirty (30) days of the action being filed. Failure to notify the Department of a legal action within thirty (30) days of the action will be grounds for termination for cause of the Contract.

The Contractor shall immediately notify the Department in writing if its ability to perform is compromised in any manner during the term of the Contract.

7.2 Subcontractors

The Contractor will not subcontract any work under the Contract without prior written consent of the Department. The Contractor is fully responsible for satisfactory completion of all subcontracted work. The Department supports diversity in its procurements and contracts, and requests that Contractor offer subcontracting opportunities to certified woman-, veteran-, and minority-owned small businesses. The Contractor may contact the OSD at osdhelp@dms.myflorida.com for information on certified small business enterprises available for subcontracting opportunities.

7.3 Assignment

The Contractor will not sell, assign, or transfer any of its rights, duties or obligations under the Contract without the prior written consent of the Department. However, the Contractor may waive its right to receive payment and assign same upon notice to the Department. In the event of any assignment, the Contractor remains responsible for performance of the Contract, unless such responsibility is expressly waived by the Department. The Department may assign the Contract with prior written notice to the Contractor.

7.4 Independent Contractor

The Contractor and its employees, agents, representatives, and subcontractors are not employees or agents of the Department and are not entitled to the benefits of State of Florida employees. The Department will not be bound by any acts or conduct of the Contractor or its employees, agents, representatives, or subcontractors. The Contractor agrees to include this provision in all of its subcontracts under the Contract.

7.5 Risk of Loss

Matters of inspection and approval are addressed in section 215.422, F.S. Until acceptance, risk of loss or damage will remain with the Contractor. The Contractor will be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer will: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer or the Department rejects a commodity, Contractor will remove the commodity from the premises within ten (10) days after notification of rejection, and the risk of loss will remain with the Contractor.

Commodities not removed by the Contractor within ten (10) days will be deemed abandoned by the Contractor and the Customer or the Department will have the right to dispose of it as its own property. Contractor will reimburse the Customer or the Department for costs and expenses incurred in storing or effecting removal or disposition of rejected commodities.

7.6 Safety Standards

Performance of the Contract for all commodities or contractual services must comply with requirements of the Occupational Safety and Health Act and other applicable State of Florida and federal requirements.

7.7 Ombudsman

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

7.8 Time is of the Essence

Time is of the essence regarding each and every obligation of the Contractor. Each obligation is deemed material, and a breach of any such obligation (including a breach resulting from untimely performance) is a material breach.

7.9 Waiver

The delay or failure by the Department or Customer to exercise or enforce any rights under the Contract will not constitute waiver of such rights.

7.10 Modification and Severability

The Contract may only be modified by written agreement between the Department and the Contractor. Should a court determine any provision of the Contract is invalid, the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Contract did not contain the provision held invalid.

SECTION 8. WORKERS' COMPENSATION AND GENERAL LIABILITY INSURANCE, AND INDEMNIFICATION

8.1 Workers' Compensation Insurance

The Contractor shall maintain Workers' Compensation insurance as required under the Florida Workers' Compensation Law or the workers' compensation law of another jurisdiction where applicable. The Contractor must require all subcontractors to similarly provide Workers' Compensation Insurance for all of the latter's employees. In the event work is being performed by the Contractor under the resulting contract and any class of employees performing the work is not protected under Worker's Compensation statutes, the Contractor must provide, and cause each subcontractor to provide adequate insurance, satisfactory to the Department, for the protection of employees not otherwise protected.

8.2 General Liability Insurance

The Contractor shall maintain insurance sufficient to adequately protect the Department and Customers from all claims or liability for personal injury or property damage arising out of, resulting from the performance of, or in connection with the operation of, the Contract. All insurance shall be with insurers authorized to transact the applicable line of insurance business in the State of Florida. The Contractor shall provide Certification(s) of Insurance evidencing that all appropriate coverage is in place and showing the Department to be an additional insured.

The Contractor must submit via email, to the Department's Contract Manager, notice of any cancellation or nonrenewal at least ten (10) calendar days prior to cancellation or nonrenewal. In the event of cancellation or nonrenewal, the Contractor will be responsible for securing a replacement insurance policy in accordance with this section.

8.3 Indemnification

The Contractor agrees to indemnify, defend, and hold the Department, Customer, the State of Florida, its officers, employees and agents harmless from all fines, claims, assessments, suits, judgments, or damages, including consequential, special, indirect, and punitive damages, including court costs and attorney's fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right or out of any acts, actions, breaches, neglect or omissions of the Contractor, its employees, agents, subcontractors, assignees or delegates related to the Contract, as well as for any determination arising out of or related to the Contract that the Contractor or Contractor's employees, agents, subcontractors, assignees or delegates are not independent contractors in relation to the Department. The Contract does not constitute a

waiver of sovereign immunity or consent by the Department or the State of Florida or its subdivisions to suit by third parties.

Without limiting this indemnification, the Department or Customer may provide 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.

SECTION 9. PUBLIC RECORDS, TRADE SECRETS, DOCUMENT MANAGEMENT AND INTELLECTUAL PROPERTY

9.1 Public Records

Solely for the purpose of this section, the Contract Manager is the agency custodian of public records. If, under this Contract, the Contractor is providing services and is acting on behalf of the public agency, as provided in section 119.0701, Florida Statutes, the Contractor shall.

(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 Chapter 119, F.S., or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the contract term and following the completion of the Contract if the Contractor does not transfer the records to the public agency.

(d) Upon completion of the Contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

(e) IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE TELEPHONE NUMBER, EMAIL ADDRESS AND MAILING ADDRESS PROVIDED FOR THE CONTRACT MANAGER.

9.2 Protection of Trade Secrets or Confidential Information.

If the Contractor considers any portion of materials made or received in the course of performing the Contract (“contract-related materials”) to be trade secret under section 688.002 or 812.081, F.S., or otherwise confidential under Florida or federal law, the Contractor must clearly designate that portion of the materials as trade secret or otherwise confidential when submitted to the Department. The Contractor will be responsible for responding to and resolving all claims for access to contract-related materials it has designated trade secret or otherwise confidential.

If the Department is served with a request for discovery of contract-related materials designated by the Contractor as trade secret or otherwise confidential, the Contractor will be responsible for filing the appropriate motion or objection in response to the request for discovery. The Department will provide materials designated trade secret or otherwise confidential if the Contractor fails to take appropriate and timely action to protect the materials designated as trade secret or otherwise confidential.

The Contractor will protect, defend, indemnify, and hold harmless the Department for claims, costs, fines, and attorney’s fees arising from or relating to its designation of contract-related materials as trade secret or otherwise confidential.

9.3 Document Management

The Contractor must retain sufficient documentation to substantiate claims for payment under the Contract and all other records, electronic files, papers and documents that were made in relation to the Contract. Contractor must retain all documents related to the Contract for five years after expiration of the Contract, or, if longer, the period required by the General Records Schedules maintained by the Florida Department of State available at:<http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>.

9.4 Intellectual Property.

Unless specifically addressed in the Contract, intellectual property rights to all property created or otherwise developed by the Contractor for the Department or the Customer will be owned by the State of Florida at the completion of the Contract.

Any inventions or discoveries developed 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 the sole property of the State of Florida. Contractor must inform the Customer 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 the Contract.

Contractor must notify the Department or State of Florida of any publications, artwork, or other copyrightable works developed in connection with the Contract. All copyrights created or developed in connection with the Contract are the sole property of the State of Florida.

SECTION 10. DATA SECURITY

10.1 Duty to Provide Secure Data

The Contractor will maintain the security of State of Florida confidential data, exempt data, or personal health data (hereinafter "State of Florida Data") including, but not limited to, a secure area around any display of such State of Florida Data or State of Florida Data that is otherwise visible. The Contractor will also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information.

10.2 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. For purposes of this subsection, "State of Florida Data" does not include media transmissions required to complete telephone or video calls for purposes of conducting business.

The Contractor agrees that a violation of items listed above 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.

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

The Contractor must notify the Department and the Customer as soon as possible, in accordance with the requirements of section 501.171, F.S., if applicable, and in all events within one (1) business day in the event Contractor discovers any State of Florida Data is breached, any unauthorized Access of State of Florida Data occurs (even by persons or companies with authorized Access for other purposes), any unauthorized transmission of State of Florida Data occurs, or of any credible allegation or suspicion of a material violation of the above. This notification is required regardless of the number of persons or type of State of Florida 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 State of Florida 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.

Upon becoming aware of an alleged security breach or security incident, the Contractor's Account Manager shall set up a conference call with the Department's Contract Manager. The conference call invitation shall contain a brief description of the nature of the event. When possible, a thirty (30) minute notice shall be given to allow Department personnel to be available for the call. If the designated time is not practical for the Department, an alternate time for the call shall be scheduled. All available information shall be shared on the call. The Contractor shall answer all questions based on the information known at that time and shall answer additional questions as additional information becomes known. The Contractor shall provide the Department with final documentation of the incident including all actions that took place. If the Contractor becomes aware of a security breach or security incident outside of normal business hours, the Contractor shall notify the Department's Contract Manager and in all events, within one (1) business day.

Access as referenced in this subsection shall mean 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.

10.3 Remedial Measures

Upon becoming aware of an alleged security breach, Contractor's Contract Manager must set up a conference call with the Department's Contract Manager. The conference call invitation must contain a brief description of the nature of the event. When possible, a thirty (30) minute notice will be given to allow Department personnel to be available for the call. If the designated time is not practical for the Department, an alternate time for the call will be scheduled. All available information must be shared on the call. The Contractor must answer all questions based on the information known at that time and answer additional questions as additional information becomes known. The Contractor must provide the Department with final documentation of the incident including all actions that took place. If the Contractor becomes aware of a security breach or security incident outside of normal business hours, the Contractor must notify the Department's Contract Manager and in all events, within one (1) business day.

10.4 Indemnification (Breach of Warranty of Security)

The Contractor agrees to defend, indemnify, and hold harmless the Department, Customer, the State of Florida, its officers, directors and employees for any claims, suits or proceedings related to a breach of the Warranty of Security. The Contractor will include credit monitoring services at its own cost for those individuals affected or potentially affected by a breach of this warranty for a two (2) year period of time following the breach.

10.5 Annual Certification

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

SECTION 11. GRATUITIES AND LOBBYING

11.1 Gratuities

The Contractor will not, in connection with the Contract, directly or indirectly (1) offer, give, or agree to give anything of value to anyone as consideration for any State of Florida officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone anything of value for the benefit of, or at the direction or request of, any State of Florida officer or employee.

11.2 Lobbying

In accordance with sections 11.062 and 216.347, F.S., Contract funds are not for the purpose of lobbying the Legislature, the judicial branch, or the Department. Pursuant to subsection 287.058(6), F.S., the Contract does not prohibit the Contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the Contract, after the Contract execution and during the Contract's term.

SECTION 12. CONTRACT MONITORING

12.1 Performance Standards

The Contractor agrees to perform all tasks and provide deliverables as set forth in the Statement of Work and exhibits to the Contract. The Department and the Customer will be entitled at all times, upon request, to be advised as to the status of work being done by the Contractor and of the details thereof. Coordination must be maintained by the Contractor with representatives of the Customer, the Department, or of other agencies involved in the Contract on behalf of the Department.

12.2 Performance Deficiencies and Financial Consequences

SLAs dictate the levels of service delivery for individual services. One, multiple, or recurring violations of a Service Level Agreement (SLA) may be considered a breach of the Contract and may result in a suspension or cancellation of purchase order(s) or CSA(s). The Department reserves the right to determine when violation(s) of SLAs constitute a breach of the Contract or will result in a suspension or cancellation of purchase order(s) or CSA(s). The Department's determination of a breach of the Contract or suspension or cancellation of purchase order(s) or CSA(s) will depend on the number and severity of the SLA violation(s), disruption to service, Contractor's response, and other factors.

In addition to the processes set forth in the Contract (e.g., SLAs), if the Department determines that there is a performance deficiency that requires correction by the Contractor, then the Department will notify the Contractor. The correction must be made within a timeframe specified by the Department. The Contractor must provide the Department with a corrective action plan describing how the Contractor will address all performance deficiencies identified by the Department.

If the corrective action plan is unacceptable to the Department, or implementation of the plan fails to remedy the performance deficiencies, the Department will retain ten percent (10%) of the total invoice amount and may suspend or cancel purchase order(s) or CSA(s) or may suspend work or terminate the Contract as set forth in section 1.4. The retainage

will be withheld until the Contractor resolves the performance deficiencies. If the performance deficiencies are resolved, the Contractor may invoice the Department for the retained amount. If the Contractor fails to resolve the performance deficiencies, the retained amount will be forfeited in order to compensate the Department for the performance deficiencies and the Department may suspend or cancel purchase order(s) or CSA(s) or may terminate the Contract as set forth in section 1.4.

12.3 Liquidated Damages

The Contractor will promptly notify the Department or Customer upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion (or delivery) of any commodity or contractual service. The Contractor will use commercially reasonable efforts to avoid or minimize any delays in performance and will inform the Department or Customer of the steps the Contractor is taking or will take to do so, and the projected actual completion (or delivery) time. If the Contractor believes a delay in performance by the Department or Customer has caused or will cause the Contractor to be unable to perform its obligations on time, the Contractor will promptly so notify the Department or Customer and use commercially reasonable efforts to perform its obligations on time notwithstanding the Department or Customer's delay.

The Contractor acknowledges that untimely performance or other material noncompliance will damage the Department or Customer, but by their nature such damages may be difficult to ascertain. Accordingly, any liquidated damages provisions stated in the solicitation will apply to the Contract. Liquidated damages are not intended to be a penalty and are solely intended to compensate for damages.

12.4 Force Majeure, Notice of Delay, and No Damages for Delay

The Contractor will not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor will notify the Department or Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within 10 days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five days after the date the Contractor first had reason to believe that a delay could result. The foregoing will constitute the Contractor's sole remedy or excuse with respect to delay. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages will be asserted by the Contractor. The Contractor will not be entitled to an increase in the Contract price or payment of any kind from the Department or Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor will perform at no increased cost, unless the Department or Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State of Florida or to Customers, in which case the Department or Customer may (1) accept allocated performance or deliveries from the Contractor,

provided that the Contractor grants preferential treatment to Customers with respect to commodities or contractual services subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the commodity or contractual services that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

SECTION 13. CONTRACT AUDITS

13.1 Performance or Compliance Audits

The Department may conduct, or cause to have conducted, either or both performance and compliance audits of the Contractor and subcontractors as determined by the Department. The Department may conduct an audit and review all the Contractor's and subcontractor's data and records that directly relate to the Contract. To the extent necessary to verify the Contractor's claims for payment under the Contract, the Contractor's agreements or contracts with subcontractors, partners or agents of the Contractor, pertaining to the Contract, may be inspected by the Department upon 15 days' notice, during normal working hours and in accordance with the Contractor's facility access procedures where facility access is required. Release statements from its subcontractors, partners or agents are not required for the Department or its designee to conduct compliance and performance audits on any of the Contractor's contracts relating to the Contract. The State of Florida's Chief Financial Officer and the Office of the Auditor General also have authority to perform audits and inspections.

13.2 Payment Audit

Records of costs incurred under terms of the Contract will be maintained in accordance with subsection 9.3 of the Contract. Records of costs incurred will include the Contractor's general accounting records, together with supporting documents and records of the Contractor and all subcontractors performing work, and all other records of the Contractor and subcontractors considered necessary by the Department, State of Florida's Chief Financial Officer or the Office of the Auditor General for audit.

SECTION 14. BACKGROUND SCREENING AND SECURITY

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

14.1 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 its direction with Access to State of Florida Data or who enter either the premises or facilities where State of Florida Data is stored or accessible. Contractor is not required to conduct the aforementioned background screening of a Person if that Person does not have Access to State of Florida Data and if that Person, whenever on Customer premises or facilities, is escorted by Customer authorized personnel.

The Contractor warrants that all Persons will have passed the Background Screening described herein before they have Access to State of Florida 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.

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 information 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.

14.2 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 as follows:

- (a) Computer related crimes
- (b) Information technology crimes;
- (c) Fraudulent practices;
- (d) False pretenses;
- (e) Frauds;
- (f) Credit card crimes;
- (g) Forgery;
- (h) Counterfeiting;
- (i) Violations involving checks or drafts;
- (j) Misuse of medical or personnel records; and

(k) 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. The Contractor will promptly notify the Department of any determinations made pursuant to this subsection. The Department reserves the right to require removal of any Persons from performing work on the Contract for any reason.

14.2.1 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.

14.2.2 Annual Certification

The Contractor is required to submit an annual certification demonstrating compliance with Section 14 of the Contract to the Department by December 31 of each Contract year.

14.2.3 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 Department's Contract Manager within 24 hours of all details concerning any reported arrest.

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

The Department reserves the right to audit the Contractor's background screening process upon two (2) days prior written notice to the Contractor during the Term of the Contract. Department will have the right to inspect the Contractor's working area, computer systems, and/or location upon two (2) business days prior written notice to the Contractor to ensure that Access to State of Florida Data is secure and in compliance with the Contract and all applicable state and federal rules and regulations.

14.4 Data Access

The Contractor shall retain a list of all Persons with Access to State of Florida 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 State of Florida Data, including a policy and procedure for Access to State of Florida Data.

The Contractor shall retain the written policy and information required in this subsection for the duration of the Contract and a period of no less than five (5) years from the date of termination of the 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. 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.

Access as referenced in this Section shall mean 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.

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

1. The identity of all individual(s) who Accessed State of Florida Data in any way, whether those individuals are authorized Persons or not;
2. The duration of the individual(s)' Access to State of Florida Data, including the time and date at which the Access began and ended;
3. The identity, form, and extent of State of Florida Data Accessed, including, but not limited to, whether the individual Accessed partial or redacted versions of State of Florida Data , read-only versions of State of Florida Data , or editable versions of State of Florida Data ; and
4. The nature of the Access to State of Florida Data, including whether State of Florida 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.

Notwithstanding any provision of the Contract to the contrary, the Contractor shall notify the Department as soon as possible and in all events within one (1) business day in the event it discovers any unauthorized Access of State of Florida State of Florida Data occurs, any unauthorized transmission of State of Florida Data, or any credible allegation or suspicion of a material violation of the above. This notification is required whether the event affects one employee/retiree or the entire population. The notification shall be clear and conspicuous and include a description of the following:

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

(d) The actions taken by the Contractor to protect the State of Florida Data information from further unauthorized Access. However, the description of those actions in the written notice may be general so as not to further increase the risk or severity of the breach.

Upon becoming aware of an unauthorized access to State of Florida Data, the Contractor's Account Manager shall set up a conference call with the Department's Contract Manager. The conference call invitation shall contain a brief description of the nature of the event. When possible, a thirty (30) minute notice shall be given to allow Department personnel to be available for the call. If the designated time is not practical for the Department, an alternate time for the call shall be scheduled. All available information shall be shared on the call. The Contractor shall answer all questions based on the information known at that time and shall answer additional questions as additional information becomes known. The Contractor shall provide the Department with final documentation of the incident including all actions that took place. If the Contractor becomes aware of an unauthorized access to State of Florida Data outside of normal business hours, the Contractor shall notify the Department's Contract Manager and in all events, within one (1) business day.

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 and Customers 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 \$10,000 for each breach of this subsection.

14.5 Indemnification

The Contractor agrees to defend, indemnify, and hold harmless the Department, the State of Florida, its officers, directors and employees for any claims, suits or proceedings related to a breach of this section. The Contractor will include credit monitoring services at its own cost for those individuals affected or potentially affected by a breach of this section for a two (2) year period of time following the breach.

SECTION 16. 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 Department's Contract Manager within five days of Contract execution. If the Contractor is not enrolled in DHS E-Verify System, it will do so within five days of notice of Contract award, and provide the Department's Contract Manager a copy of its MOU within five days of Contract execution. The link to E-Verify is <http://www.uscis.gov/e-verify>. Upon each Contractor or subcontractor new hire, the Contractor must provide a statement within five (5) days to the Department's Contract Manager identifying the new hire with its E-Verify case number.

SECTION 17. COMMUNICATIONS AND CONFIDENTIALITY

The Contractor shall not, without first notifying the Department's Contract Manager and securing the Department's prior written consent, make public statements which concern the Contract or its subject matter, disclose or permit disclosure of any data or information obtained or furnished in accordance with the Contract, or use any statement attributable to the Department or its employees. Public statements include press releases, publicity releases, promotions, marketing materials, corporate communications, or other similar communications. The Department's written consent shall not be construed to supersede or waive the Contract requirements imposed on the Contractor to maintain confidential information.

The Contractor must maintain confidentiality of all confidential data, files, and records related to the services and commodities provided pursuant to the Contract and must comply with all state and federal laws, including, but not limited to Chapter 119, F.S., and 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.

Contractor will not use the State seal, name, or logo of the Department or State, or Contractor's relationship to the Department for any purpose without the prior written consent of the Department.

Contractor may refer to the Contract as an experience citation with other customers without prior approval.

Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Department, including, but not limited to:

- 1) mentioning the Contract in a press release or other promotional material,
- 2) identifying the Department or the State as a reference, or
- 3) otherwise linking Contractor's name and either a description of the Contract or the name of the State, the Department or any SUNCOM Client in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

SECTION 18. LICENSING

All SUNCOM services shall include all required licenses for Customers to utilize the SUNCOM services at no additional cost to the Customer. All third-party license costs for Contractor-provided hardware and/or software shall be the responsibility of the Contractor. The Contract will take precedence over any and all End User License Agreement conflicting terms.

SECTION 19. PERFORMANCE BOND

Within thirty (30) days of Contract execution, Contractor will deliver to the Department's Contract Manager a Performance Bond in the amount of \$60 million. The bond shall be used to guarantee satisfactory performance by the Contractor throughout the term of the Contract.

- A. No sooner than two (2) years after Contract execution, if it is in the best interest of the State of Florida, as determined by the Department, the Contractor's Performance Bond may be reduced for the remainder of the term. This reduction shall require an Amendment to the Contract with the agreement by both parties.
- B. The Performance Bond shall be maintained throughout the term of the Contract, naming the Department as the beneficiary. The Performance Bond must be issued by an acceptable surety company, as determined by the Department, and which surety must be licensed to do business in the State of Florida. The insurer or bonding company shall pay losses suffered by the State directly to the Department.
- C. The Contractor and insurer or bonding company shall provide the Department prior written notice or immediate notice upon knowledge of any attempt to cancel or to make any other material change in the status, coverage, or scope of the Performance Bond, or of the Contractor's failure to pay bond premiums.
- D. The Department shall not be responsible for any premiums or assessments on or in relation to the Performance Bond.
- E. The Performance Bond is to protect the Department and the State against any loss sustained through failure of the Contractor's performance in accordance with the Contract. No payments shall be made to the Contractor until the Performance Bond is in place and approved by the Department in writing.
- F. Within thirty (30) days of Contract execution, and by Contract execution anniversary each year following, the Contractor shall provide the Department with a surety bond continuation certificate or other acceptable verification that the Performance Bond is valid and has been renewed for an additional year.
The Performance Bond provided under this Section shall be used solely to the extent necessary to satisfy the damage claims made by the State pursuant to the terms of the Contract. In no event shall the Performance Bond be construed as a penalty bond.

SECTION 20. CUSTOMER OF RECORD

The Department of Management Services is considered the customer of record for all services for the purposes of the Federal Communications Commission and Customer Proprietary Network Information.

SECTION 21. SPECIFIC APPROPRIATION

The following is the specific state funds from which the state will make payment under the first year of the contract:

General Appropriations Act (Florida Law)
2845 SPECIAL CATEGORIES
CENTREX AND SUNCOM PAYMENTS
FROM COMMUNICATIONS WORKING
CAPITAL TRUST FUND

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