

**Attachment G - SSI Contract
Technology System Contract General Terms and Conditions**

**The Department of Elder Affairs
and
<<Awarded Respondent>>**

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This Contract, between _____ (Contractor), and the state of Florida (State) Department of Elder Affairs (the Department) is effective as of the date last signed below (Effective Date).

The Contractor responded to the Department's Invitation to Negotiate (ITN) No. #18-ITN-001-JT.

The Department has determined the Contractor's offer provides the best value to the State.

The Department hereby retains the Contractor to provide the services described herein in accordance with the terms and conditions of this Contract.

The first-year funding is based on appropriation Chapter 430, Florida Statutes, General Appropriations, Specific Appropriation 408 (per Section 216.313, Florida Statutes (F.S.)).

Now, therefore, in consideration of the foregoing and their respective covenants contained herein, the parties hereto agree as follows:

1. DEFINITIONS

In this Contract, capitalized terms shall have the meanings stated in Attachment 6 – Definitions. As used in this document, the term “Contract” (whether or not capitalized) shall, unless the context requires otherwise, be considered to be references to this Contract, including the Statement of Work and other Contract Attachments. Any other capitalized term used elsewhere in the Contract but not defined in Attachment 6 – Definitions shall have the meaning given it in the Contract document in which it is used.

2. CONTRACT

2.1 Introduction

This Contract is the principal contract for the completion of the Enterprise Client Information and Registration Tracking System (eCIRTS) Project (Project), which will result in the replacement of certain existing systems and components that perform various client management functions for the State with a new enterprise client management solution. Attachment 3 – Selected Portions of the ITN, describes the background, purpose, scope and objectives of the Project, for which the Contractor will serve as the prime Contractor and software systems integrator.

2.2 Contract Documents

These General Terms and Conditions together with the following attached documents, constitute the Contract between the parties (Parties) hereto and sets forth their entire understanding and agreement with respect to the subject matter of the Contract. In case of a conflict between these General Terms and Conditions and any Contract Attachment, these General Terms and Conditions shall control.

In the case of conflict between or among Contract Attachments, the hierarchy of precedence after Contract Attachments is as follows:

- This Contract
- Attachment 1 – Statement of Work and Attachment 10 – Service Level Agreement(s), Attachment 6 – Definitions, and Attachment 8 – Deliverable Acceptance Criteria,
- Attachment 2 – Payment Schedule
- Attachment 3 – Selected Portions – Sections of the ITN (as modified by any applicable Addenda to the ITN or request for Best and Final Offer; and its attachments)
- Attachment 4 – Purchasing Form PUR 1000 (except as superseded within the Contract and the following inapplicable sections: 2, 4, 20, 27, 31, and 43)
- Attachment 5 – Selected portions – Approved sections of the Contractor's ITN Reply (these will exclude any other Contractor or Subcontractor contract documents that prohibit or negate this Contract and its attachment, except by amendment)
- Attachment 7 – Baseline Software License Agreement(s)
- Attachment 9 – Approved Subcontractors

Contract Amendments may expressly change the provisions of this Contract. If they do so expressly, then the most recent of them will take precedence over conflicting provisions of any earlier document forming part of the Contract.

2.3 Contract Term

The term of this Contract (Contract Term) will commence on the Effective Date and remain in effect for all DDI Phases. At the option of the Department, the Contract may be renewed for successive renewal periods up to the length of the original Contract Term based upon the prices and rates for the contractual services (Services) set forth in Attachment 2 – Payment Schedule. If the term of this Contract expires while any warranty or other performance obligations of the Contractor hereunder remain unfulfilled, all applicable terms and conditions of the Contract shall survive such expiration and continue to apply for the amount of time required for the fulfillment of such remaining performance obligations. However, for the avoidance of doubt, the Department shall not be obligated to pay the Contractor for fulfilling any such unfulfilled warranty or other performance obligations following the expiration (or earlier termination) of the Contract unless this Contract expressly states otherwise.

2.4 Contractual Services

The Services and Deliverables to be rendered by the Contractor pursuant to this Contract are defined and described in detail in Attachment 1 – Statement of Work. The Contractor shall have full responsibility for the successful performance, completion, and integration of all Services and Deliverables, subject only to the overall direction and oversight of the Department and cooperation and support of the Department as specified in the Statement of Work. The Department will consider the Contractor to be the sole point of contact with regard

to all contractual matters under this Contract, including payment of any and all charges for Services, whether performed by the Contractor or by a subcontractor to the Contractor.

3. ACCEPTANCE OF DELIVERABLES

- (a) All Deliverables will be evaluated against the defined Acceptance Criteria, which are established within Attachment 8 Deliverable Acceptance Criteria. The Deliverable management procedures including roles, responsibilities, review cycles will be defined in the Project Management Plan (PMP). Prior to the acceptance of the PMP, the Department anticipates utilizing the following Deliverable management process:
 - (i) The Department will complete its review of Deliverables within ten (10) Business Days after receiving the Deliverable.
 - (ii) The Department may return a Deliverable for modification.
 - (iii) The Contractor will have up to ten (10) Business Days after receiving request for modification to cure and return Deliverable to the Department.
 - (iv) If additional cure and review cycles are needed, the Contractor and the Department will have seven (7) to ten (10) Business Days to review, request revisions or make modifications. If either the Contractor or the Department needs additional time to review, modify, or cure the Deliverables, the request is submitted in writing by email to the Contract Manager for consideration.
- (b) Failure to accept a Deliverable within twenty (20) Business Days of an original or revised Deliverable submission means automatic non-acceptance by the Department unless stated otherwise by the Contract Manager or designee in writing.
- (c) The Department may provide additional acceptance criteria during the Contract term to be used for the Deliverables. The Department reserves the right to require the Contractor to revise Deliverables previously approved at no additional cost to the Department for any inadequate or insufficient information. The invoices will not be paid for Deliverables that fail to meet specifications until acceptable corrective action has been completed.
- (d) Unless specifically provided for elsewhere in this Contract, the Department's Contract Manager has the responsibility to communicate acceptance of Deliverables to the Contractor in writing. In the case of non-acceptance, the Department's Contract Manager will provide written notice to the Contractor that includes reasons for non-acceptance. The Contractor will cure the deficiencies for non-acceptance within the timeline specified by the Contract Manager.

4. CONTRACTOR STAFF AND THIRD PARTIES

4.1 Contractor Staff, Generally

- (a) The Contractor shall have full responsibility for the successful performance and completion of all of the Services. All persons assigned by the Contractor to perform Services under this Contract shall be employees, independent (1099) contractors of the Contractor (collectively, "Contractor Staff"), or shall be approved Subcontractor Staff. For purposes of this Contract, independent (1099) contractors of the Contractor or its Subcontractor shall be subject to the same terms and conditions of this Contract as if they were employees of the Contractor or Subcontractor. The Contractor is responsible for all acts and omissions of Contractor Staff and Subcontractor Staff under or relating to this Contract and the Project as if they were the acts and omissions of the Contractor.
- (b) In providing Contractor Staff or Subcontractor Staff to perform the Services, the Contractor agrees to comply with all applicable laws, including those pertaining to eligibility, non-discrimination and working conditions. The Contractor (or its applicable Subcontractor) will be responsible for validating the identity of each individual and for ensuring that Contractor Staff or Subcontractor Staff have the proper working permits and immigration status, as applicable, at all times while assigned to perform Services under this Contract.
- (c) Contractor Staff or Subcontractor Staff will at all times be considered employees or agents of the Contractor (or its applicable Subcontractor) and will not be considered employees or agents of the Department or any other State entity for any purpose. As between the Contractor and the Department, the Contractor is solely responsible for payment of all wages, salaries, benefits, and other amounts due to or in respect of Contractor Staff or Subcontractor Staff that may accrue to such Staff. The Contractor (or its applicable Subcontractor) will also be solely responsible at all times for all financial, reporting, and legal obligations as the employer of such Staff, including, as applicable, U.S. and non-U.S. Social Security or other mandatory social welfare benefit programs, all income and contributory income taxes and withholdings in any jurisdiction, unemployment taxes and compensation, worker's compensation insurance and protections, and statutory and other benefits.
- (d) The Contractor will manage, supervise and provide direction to Contractor Staff or Subcontractor Staff and otherwise cause them to comply with the obligations and restrictions applicable to the Contractor under this Contract.
- (e) Throughout the Contract Term, the Contractor will establish and maintain policies and procedures reasonably designed to ensure that Contractor Staff or Subcontractor Staff comply with applicable laws and the Contractor's other duties and obligations under this Contract, including by providing periodic training and requiring Contractor Staff or Subcontractor Staff to agree in writing to comply with a code of conduct and

code of ethics acceptable to the Department. The Contractor will not assign to the Project any person who has been convicted of any criminal offense involving dishonesty, a breach of trust, or money laundering, or who has been convicted of a felony.

4.2 Assignment and Onboarding of Contractor Staff or Subcontractor Staff

- (a) While complying with the Staff selection and assignment provisions of this Contract, the Contractor will assign an adequate number of Contractor Staff or Subcontractor Staff to perform the Services who are properly educated, trained, experienced, and fully qualified for the duties they are assigned to perform. The Department will have the right to review the qualifications of and approve the assignment of all Key Staff and any Contractor Staff or Subcontractor Staff assigned to perform Services of this Contract.
- (b) Subject to the other requirements of this Contract pertaining to Contractor Staff or Subcontractor Staff, the Contractor will use Commercially Reasonable Efforts to assign to the Project Contractor Staff or Subcontractor Staff who: (i) are employees (rather than independent contractors) of Contractor or its Subcontractor; (ii) have prior experience with public sector implementations of the Contractor's Solution; and (iii) reside in the area in which they will be assigned as their primary work location.
- (c) Except as restricted by applicable law, prior to any Contractor Staff or Subcontractor Staff beginning performance of Services, the Contractor will take (or cause the applicable Contractor Staff or Subcontractor Staff to take) the following steps at Contractor's expense: (i) complete any Department-provided or required orientation and security procedures; (ii) screen and conduct background checks of the Contractor Staff or Subcontractor Staff in accordance with State policies that have been provided to the Contractor in writing; (iii) verify that each individual has received and signed a copy of the Contractor's code of conduct and ethics; and (iv) confirm with the Department that these and any other onboarding steps described in this Contract or the State's written policies for contractors have been successfully completed.

4.3 Assignment of Key Staff

At the Project's inception, the Contractor shall provide the Key Staff identified by Project role or name in the Project Organizational Chart contained in Attachment 1 – Statement of Work. Thereafter, the Department may designate a reasonable number of other Project roles as those to be occupied by Key Staff. Unless otherwise specified in Attachment 1 – Statement of Work, all Key Staff will be dedicated full-time to the Project. The Department will have the right to approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Staff. Before assigning any Key Staff to the Project, the Contractor will notify the Department of the proposed assignment, introduce the individual to the appropriate Department representatives, and provide the Department with a resume and any other information about the individual reasonably requested by the Department. The

Department reserves the right to interview the individual before granting written approval. The Contractor will maintain a reasonable backup plan designed to ensure continuity of Project activities in the event any Key Staff leaves or is removed from the Project for any reason.

4.4 Replacement of Key Staff

- (a) Except in cases where the timing of the replacement is outside the Contractor's control (including illness, disability, and resignation of Key Staff), the Contractor will not remove or reassign any Key Staff until a replacement with equal or superior experience and qualifications has been reviewed and approved by the Department, replacement has completed all required onboarding, knowledge transfer, and training activities, including training the replacement on the Department's and the Project's policies and procedures, and replacement has shadowed the Key Staff he or she is replacing for a period of at least twenty (20) Business Days prior to the replacement taking effect, at no additional cost to the Department. To that end, whenever possible, the Contractor will give the Department notice at least sixty (60) Business Days in advance of a proposed change in Key Staff.
- (b) If the Contractor removes any Key Staff from their assigned role or the Project without the prior written consent of the Department, it shall be considered an Unauthorized Removal. Any Unauthorized Removal may be considered by the Department to be a material breach of the Contract, which shall entitle the Department to impose financial consequences in the form of liquidated damages, as set forth in Attachment 10 – Service Level Agreement or terminate the Contract for cause.
- (c) It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Project, to the loss and damage of the Department and the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the Department and the State as a result of any Unauthorized Removal. Therefore, Contractor and the Department agree that, in the case of any Unauthorized Removal in respect of which the Department may not elect to exercise its rights to terminate this Contract.
- (d) The Department will assess liquidated damages against the Contractor associated to staffing changes as specified in Attachment 10 – Service Level Agreement. For amounts due the Department as liquidated damages, the Department may at its option deduct the amount due from any money payable to the Contractor by the Department or bill Contractor as a separate item.
- (e) The Department reserves the right to require removal of Contractor Staff or Subcontractor Staff (including Key Staff) found, in the judgment of the Department, to be unacceptable.

4.5 Staffing Levels

- (a) All Project staffing requirements not specified in the Statement of Work or the Department-approved Deliverable as Project roles to be provided by Department Staff will be supplied by the Contractor. Project staffing includes not only Key Staff, but also non-key functional staff, technical staff, secretarial, clerical, and Project and Contract administration and support staff. The Contractor shall not provide fewer Contractor Staff or Subcontractor Staff for the performance of Project tasks than indicated in the Department-approved Project schedule unless the Contractor has demonstrated to the Department's reasonable satisfaction that the Contractor is able to complete performance of any tasks in question in accordance with the agreed Project schedule using fewer Contractor Staff or Subcontractor Staff. The Contractor shall maintain travel and office schedules for all staff which are subject to the Department's approval. The Contractor shall require all staff to complete daily timesheets with task assignments on a monthly basis and shall provide them to the Department upon request. If the staffing levels specified in the Department approved Deliverable should prove insufficient to complete any Contractor Project tasks in accordance with the agreed Project schedule, the Contractor shall so notify the Department in writing, following which the Contractor shall add an adequate number of additional qualified Contractor Staff or Subcontractor Staff to support the on-time completion of Contractor Project tasks in accordance with the Contract, at no additional charge to the State and, as applicable, in accordance with Section 4.3.
- (b) The Contractor's failure to replace Contractor Staff or Subcontractor Staff shall be deemed to be a material breach of this Contract.

4.6 Staff Turnover

The Contractor acknowledges and agrees that it is in best interests of both Parties to keep the attrition rate of Contractor Staff or Subcontractor Staff assigned to the Project to a reasonably low level, and the Contractor will use Commercially Reasonable Efforts to do so. If the Department determines that the turnover rate of Contractor Staff or Subcontractor Staff is excessive and so notifies the Contractor, the Contractor will provide data concerning the turnover rate of Contractor Staff or Subcontractor Staff, meet with the Department to discuss the reasons for the turnover rate and submit to the Department its proposals for reducing the turnover rate to an acceptable level. It is acknowledged that the privacy interests of Contractor Staff or Subcontractor Staff may limit the level of detail of information provided or discussed. Notwithstanding any attrition of Contractor Staff or Subcontractor Staff, the Contractor shall remain obligated to perform the Services without degradation and in accordance with the Project schedule.

4.7 Contractor Recruitment of Department Staff

Unless written authorization is received in advance from the Department, the Contractor shall not attempt to recruit, hire, or otherwise contract with Department Staff during the Contract

Term. The term “attempt to recruit” excludes any broad-based effort to attract applicants if not specifically designed to attract Department Staff. In the event a Key Staff member is removed from the Project, the Contractor agrees that it will release such Key Staff from any non-compete agreement intended to bar such Key Staff from employment with the Department.

4.8 Cooperation with Third Parties

The Contractor shall cause all Contractor Staff or Subcontractor Staff to cooperate with the State, its agents, and other entities identified by the State. The Contractor shall not commit or permit any act that interferes with the performance of work by third parties or by Department or State Staff.

4.9 Subcontracting by the Contractor

In providing Services under this Contract, the Contractor is permitted to utilize Subcontractors approved in writing by the Department. The Department will consider the Contractor to be the sole point of contact with regard to all contractual matters under this Contract, except as expressly provided otherwise herein. A list of the Subcontractors, if any, approved by the Department as of the execution of this Contract, is set forth in Attachment 9 – Approved Subcontractors. During the term of the Contract, Subcontractors may be substituted with the prior written approval of the Contract Manager. The Department shall have the right to require the Contractor to replace any Subcontractors found, in the judgment of the Department, to be unacceptable. Please see Section 32 of Attachment 4 – PUR 1000, for additional requirements regarding utilization of Contractor Staff and Subcontractor Staff. The management of Subcontractors is the responsibility of the Contractor, and the Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if the Contractor had not subcontracted such performance. All payments to Subcontractors or suppliers of the Contractor shall be made by the Contractor. Except as otherwise agreed in writing by the Department and the Contractor, the Department will not be obligated to direct payments for Services other than to the Contractor. The Department’s written approval of any Subcontractor engaged by the Contractor to perform any obligation under this Contract shall not relieve the Contractor of any obligations or performance required under this Contract.

4.10 Subcontractor Approval Procedure

After Contract execution and before the Contractor enters into any Subcontractor Agreement with a Subcontractor(s) to provide, or assist in the provision of, any Services under the Contract, the Contractor shall give the Department at least twenty (20) Business Days written notice of its intent to subcontract Services required under the Contract, the basis for the need to subcontract, and any other information the Department may reasonably require to evaluate the proposed Subcontractor. The Department will have twenty (20) Business Days from its receipt of the notice to object or ask for additional information as to such Subcontractor. Any objection or request for additional information by the Department will

be in writing and state all reasons. The Parties agree that any change in control of a Subcontractor shall require the Subcontractor to go through the above approval process again as if it were a new Subcontractor.

4.10.1 Subcontractor Agreements

- (a) Except as otherwise provided in this Contract, the Contractor shall ensure that all Subcontractor Agreements (or changes to an existing Subcontractor Agreement) shall contain substantially the following terms and conditions: (i) Subcontractor and its employees and agents must comply with all off-shoring restrictions, subcontracting restrictions, confidentiality provisions, security provisions, background screening requirements, Quality Assurance (QA) and monitoring requirements, and documentation requirements contained in the Contract, including the Security Plan; (ii) Subcontractor shall not make any change to its business model to allow Contractor and Subcontractor Staff with State Data access to work remotely, without the prior written consent of the Department; (iii) Subcontractor agreements will not require the Department or Eligible Entity to indemnify a Subcontractor; and (iv) except where specifically approved in writing by the Department, the Contractor shall provide in all of its contracts with the Subcontractors are bound by the terms of this Contract.
- (b) Upon request by the Department and at the Contract Effective Date, the Contractor shall provide a copy of any Subcontractor Agreement (and addendums) to the Department. The Department agrees that the Contractor may redact Confidential Information from Subcontractor Agreements.

4.10.2 Subcontractor Removal

The Contractor may remove any Subcontractor at any time but shall require the Department's approval. The Contractor shall notify the Department in writing in the event it plans to remove a Subcontractor or when it plans to terminate or materially change, the terms of any Subcontractor agreement at least forty (40) Business Days before such action is taken to ensure adequate time to effectively communicate changes and to provide knowledge transfer to the Contractor, Project, or replacement staff as agreed to by the Department; unless good reason exists for more immediate action by the Contractor against the Subcontractor, in which event the Contractor shall notify the Department of such action no later than the day the action is taken. Such notice shall set forth the relevant details of the reasons for termination. If the Contractor seeks to replace any such removed Subcontractor, such replacement Subcontractor must be approved as provided herein by the Department. If the Contractor removes a Subcontractor staff assigned to a Key Staff role, Section 4.4 applies.

4.10.3 Other Requirements

Except as otherwise provided in this Contract, the Contractor shall perform annual audits (with on-site audits occurring at least every other year) to verify that all Subcontractors comply with all security requirements applicable to them under the Contract and the Security

Plan with regard to handling of State Data. The Contractor shall provide a Subcontractor audit checklist to the Department for approval in advance of performing Subcontractor audits. The Contractor shall provide the Department a copy of all annual audit results. Except as otherwise provided in this Contract, the Contractor shall require at least annual training of Subcontractor staff for all privacy and security requirements applicable to them under the Contract and the Security Plan with regard to handling State Data. Upon request by the Department, the Contractor shall provide a copy of any training materials and training logs demonstrating the participation of the Subcontractor and Subcontractor staff.

5. WORK LOCATIONS

Except as otherwise agreed by the Department in writing, all Contractor Staff or Subcontractor Staff will perform their duties primarily at the at Department-provided offices and facilities in Tallahassee or, at the Department's election, Contractor-supplied offices and facilities in Tallahassee, Florida. Contractor-supplied offices shall meet the specifications described in Attachment 1 – Statement of Work section for project office equipment and facilities. Due to security, privacy, and identity protection concerns, all activities comprising the Services under this Contract shall be performed within the borders of the United States (U.S.). The Department may, in writing, allow work involving overseas transmission of State Data to be performed at locations outside the U.S.

In such cases (if any) the Department may require such additional restrictions and safeguards as it deems appropriate. This provision applies to work performed by Subcontractors at all tiers.

6. CONTRACT ADMINISTRATION AND MANAGEMENT

6.1 Contract Administrator

The Contract Administrator is the Department employee who is primarily responsible for maintaining the Contract administration file. The Department reserves the right to replace its Contract Administrator without a Contract amendment. Such changes are documented in writing to the Contractor's Authorized Representative(s).

6.2 Department Contract Manager

(a) The Contract Manager is the Department employee who is primarily responsible for overseeing the Contractor's performance of its duties and obligations pursuant to the terms of this Contract. The Department Contract Manager shall coordinate any changes, modifications, clarifications or amendments of the Contract. The Department reserves the right to replace its the Department Contract Manager without a Contract amendment. Such changes will be documented in writing to the Contractor's Authorized Representative(s).

- (b) The Contract Manager shall coordinate any changes, modifications, clarifications or amendments to this Contract with both the Department staff authorized by Department policy and an Authorized Representative of the Contractor.

The Department's Contract Manager is:

Shandra McGlohon

4040 Esplanade Way

Tallahassee, Florida 32399-7000

850-414-2134

mcglohons@elderaffairs.org

- (c) All notices under this Contract shall be served upon the Department by email with a hard copy follow up, sent by reputable courier service (with signature required), or in person, to the Department's Contract Manager.

6.3 Contractor's Authorized Representative(s)

- (a) The individual(s) identified below as the Contractor's Authorized Representatives shall have the authority to make binding commitments on the Contractor's behalf. The Contractor is the sole point of contact with regard to all contractual matters under this Contract, including payments. The Contractor reserves the right to replace its Authorized Representatives without a Contract amendment. Such changes will be documented in writing to the Department's Contract Manager. Replacement of any Authorized Representatives who have been designated as Key Staff are subject to Section 4.4.

- (b) The Contractor's Authorized Representative(s):

- <<insert name>>
<<insert location>>
<<insert phone number>>
<<insert email>>
- <<insert name>>
<<insert location>>
<<insert phone number>>
<<insert email>>

[Avoid use of personally identifiable information since the contract will be posted on the Internet]

- (c) All notices under this Contract shall be served upon the Contractor by email with a hard copy follow up, sent by reputable courier service (with signature required), or in person, to the Contractor's Authorized Representative.

7. CONTRACT CHANGES

7.1 Contract Amendments; Waivers

- (a) This Contract may not be modified, amended, extended, or augmented, except by a writing executed by each Party's authorized representative, and any breach or default by a Party shall not be waived or released other than in a writing signed by the other Party's authorized representative. If a Party waives any right, power or remedy, the waiver will not waive any successive or other right, power or remedy that Party may have. No verbal modifications to this Contract will be valid. Any terms and conditions that the Contractor provides that attempt to modify the Contract or add additional restrictions of usage, license conditions, or requirements have no effect and are not enforceable under the Contract unless agreed to as part of a Contract Amendment.
- (b) Any changes that result in a change in cost will require a Contract Amendment. If the scope of the Services under the Statement of Work is subsequently reduced by the State, the Parties shall negotiate, through the Change Process as defined in Section 7.2, an equitable reduction in the Contractor's price under such Statement of Work commensurate with the reduction in scope.

7.2 Changes to the Services

- (a) The Department and the Contractor follow the Project's change management process specified below until further supplemented in the PMP (collectively "Change Process"). If the Contractor or the Department initiates a change, the Contractor shall, without undue delay, examine and identify to the Department the implications of the requested change on Deliverables including scope, schedule, and pricing and furnish a proposed Contract Amendment, if applicable. The Department shall review the proposed change to examine the implications of the requested change. The Department may accept the Contractor's proposal for change, reject it, or reach another agreement with the Contractor. If the Contractor proposes functional equivalents or substitutions, the Department shall determine in its sole discretion whether modified solution is acceptable as an equivalent.

Substitutions shall meet or exceed the applicable requirements set forth in the Contract unless otherwise agreed to by the Parties.

- (b) If the Contractor believes the Department's requested change should not be implemented, the Contractor will make a recommendation to the Department in writing but shall nevertheless follow the Change Process and carry out the change as directed by the Department.

7.3 Amendment and Change Scheduling

The Contractor shall not begin performing services pursuant to a change before receiving the Department's written approval of the change or the Contract Amendment has been executed.

If the Contractor begins such services prior to the approval of the change or the execution of the Contract amendment, such activities shall be considered to be performed gratuitously by the Contractor, and the Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. Any Contract amendment resulting from a Change Process under this Contract shall list (or indicate by reference to the appropriate Contract Attachment) the prices for all Services, equipment and commodities to be provided thereunder. The Contractor may invoice the Department for a Deliverable as set forth in the Contract Amendment only after receiving written Acceptance from the Department of such Deliverable. The most recent Contract Amendment will take precedence over other conflicting provisions of this Contract and any previous Contract Amendments.

7.4 Implied Services

If any functions or activities not specifically described in the Statement of Work or elsewhere in the Contract as Contractor responsibilities are reasonably required for the proper performance and provision of the Services described in the Statement of Work or elsewhere in the Contract, such functions or activities will be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described in the Statement of Work (i.e., they will be provided as part of the contracted Services at no additional charge to the Department and will not require a Contract Amendment).

8. PROJECT ADMINISTRATION AND MANAGEMENT

8.1 Project Management Responsibility

The specific project management responsibilities of the Contractor and the Department are defined in Attachment 1 – Statement of Work. The Contractor shall coordinate the delivery of Services with the Department’s Project Director. The Contractor will follow the Project management procedures outlined in the approved PMP.

8.2 Records and Inspections

8.2.1 Inspection of Work Performed

The State’s authorized representatives shall at all reasonable times have the right to enter the Contractor's premises, or any other places where the Services are being performed, and shall have access, upon request, to interim drafts of Deliverables or work-in-progress. Upon reasonable notice and during business hours, the State’s representatives (including the Auditor General, the Department, the Division or any governmental representative seeking to inspect the Project) shall be allowed to inspect, monitor, or otherwise evaluate the work being performed. The Contractor must provide access to staff, systems, and facilities.

8.2.2 Audits and Data Retention

- (a) The Contractor understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. The Contractor will comply with this duty and ensure that its contracts with any Subcontractors include this requirement, in writing, in its Subcontractor Agreements.
- (b) The Contractor will cooperate in completion of all audits and data retention requirements in accordance with timeframes defined by the State. Refusal to allow auditor access as required by the Contract or failure to meet data retention requirements related to the Services are considered a material breach of the Contract and cause for termination.

9. OVERSIGHT

9.1 Agency for State Technology (AST)

The Contractor understands its duty to comply with the Florida Information Technology Project Management and Oversight Standards as defined in Chapter 74-1, F.A.C. The Contractor will ensure the AST has the necessary data and reports to support compliance. The AST shall have the authority to access any and all documents, information or gain other access afforded the Department under this Contract.

9.2 Independent Verification and Validation (IV&V)

The Department reserves the right to contract for third-party consultant services to deliver IV&V that provides an objective assessment of software products, processes, Contract requirements and the system and services throughout the Contract term. The third-party IV&V consultants shall have the authority to access any and all documents, information or gain other access afforded the Department under this Contract. The Department will use reasonable efforts to minimize the disruption to the business operations of the Contractor, its affiliates, and its Subcontractors.

10. STATE RESPONSIBILITIES

10.1 State Performance Obligations

The Department shall perform those tasks expressly identified as Department responsibilities in Attachment 1 – Statement of Work.

10.2 Impact of State Performance on Contractor

- (a) The failure of the Department (or other entity assisting the State) to perform, or delay in performing, any of the State's responsibilities does not constitute grounds for the Contractor to assert a claim for damages against the Department or other entity, or for the Contractor to terminate this Contract.

- (b) The Contractor's failure to perform or delay in performing any of its obligations under this Contract is addressed in Section 18 to the extent that (i) such Contractor nonperformance is caused directly by the Department's (or other entity's) failure to perform any State responsibilities, and (ii) Contractor provides the Department with reasonable notice of such nonperformance and, if so requested by the Department, uses Commercially Reasonable Efforts to perform notwithstanding such failure or delay on the part of the State.

10.3 Resources

The Department shall provide the resources expressly identified as resources to be furnished by the Department in Attachment 1 – Statement of Work.

10.4 Property

If the Department provides any State-owned property to the Contractor for use in rendering the Services, the Contractor is responsible for maintaining such property with reasonable care during the period it is in the Contractor's possession or control. The Contractor is responsible for returning to the Department any Department-furnished property when no longer required for the Project in the same condition as when provided by the Department, reasonable wear and tear excepted.

11. PAYMENTS

11.1 Pricing Structure

The Department will pay the Contractor for performing the Services and fulfilling the Contractor's duties and obligations under this Contract in accordance with Attachment 2 – Payment Schedule which may include payment holdback amounts.

11.2 Invoicing and Payment

- (a) Payment and invoicing is made under this Contract based on the Department's acceptance of Deliverables (except in the case of specific tasks the Department has authorized the Contractor to perform on a time and materials basis, which shall be invoiced monthly in arrears). Invoices will be submitted within twenty (20) Business Days after the Department's issuance of a notice of acceptance of each Deliverable. Payments are made in accordance with the provisions of Section 215.422, F.S. Failure to complete the required duties as outlined in the Attachment 1 – Statement of Work shall result in the rejection of the invoice.
- (b) For late payments, a separate interest penalty, computed at the rate determined by the Florida Chief Financial Officer pursuant to Section 215.422, F.S., is due and payable, in addition to the invoice amount, to the Contractor. To obtain the applicable interest rate, please refer to <http://www.myfloridacfo.com/Division/AA/Vendors/default.htm>. Interest penalties

of less than one dollar will not be enforced unless the Contractor requests payment. Invoices which have to be returned to the Contractor because of Contractor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the agency with the proper tax payer identification information documentation to be submitted before the prompt payment standards are to be applied.

- (c) A Vendor Ombudsman has been established with the Department of Elder Affairs. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a State agency. The Vendor Ombudsman may be reached at (850) 513-5516.
- (d) Each invoice will be accurate and include the level of detail necessary to satisfy the Department's pre-audit and post-audit requirements. Invoices for tasks performed on a time and materials basis shall include or be accompanied by sufficient documentation to support the invoiced charges, including the number of hours of billable work performed, a narrative description of the tasks performed, and copies of the timesheets submitted by Contractor Staff or Subcontractor Staff who performed tasks billed on a time and materials basis. At the Department's option, and in addition to, and not in lieu of, printed invoices, the Contractor may be required by the Department to render invoices electronically.

11.3 Taxes

The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale of, and use of, tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Excise Tax exemption certificates will be furnished with the purchase order if requested.

11.4 Out-of-Pocket Expenses

The Contractor acknowledges that the out-of-pocket expenses that the Contractor expects to incur in performing the Services (such as, but not limited to, travel and lodging, document reproduction and shipping, and long-distance telephone) are included in the Contractor's Firm Fixed Price, and hourly rates if applicable, for the Services. Accordingly, the Contractor's out-of-pocket expenses are not separately reimbursable by the Department.

11.5 Off-Set

With respect to any amount to be paid to the Department by the Contractor pursuant to this Contract, the Department may, at its option, off-set that amount as a credit against the charges payable to the Contractor.

11.6 Disputed Charges

The Department may withhold payment of any invoiced amount that the Department disputes in good faith pending the resolution of the dispute. The Department will notify the Contractor in writing of any disputed charges for which the Department is withholding payment. Disputed charges must be resolved in accordance with procedures applicable to the resolution of disputes described in Section 215.422, F.S.

11.7 Final Payment

Payment of the full amount is contingent on full and complete performance of all obligations of the Contractor under this Contract. The Contractor's acceptance of final payment by the Department under this Contract shall constitute a waiver of all claims by the Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

12. PUBLIC RECORDS AND CONFIDENTIALITY

12.1 Public Requirements

12.1.1 Public Records Access Requirements

If the Contractor is acting on behalf of the Department in its performance of services under the Contract, the Contractor must provide requested public information including all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by the Contractor in conjunction with the Contract (Public Records), unless the Public Records are exempt from public access pursuant to Section 24(a) of Article I of the Florida Constitution or Section 119.07(1), F.S. The Department may unilaterally terminate the Contract for cause if the Contractor refuses to allow public access to Public Records as required by law.

12.1.2 Public Records Requirements Applicable to All Contractors.

- (a) For purposes of the Contract, the Contractor is responsible for knowing Florida's Public Records law, consisting of Chapter 119, F.S., Section 24(a) of Article I of the Florida Constitution, or other applicable State or federal law (Public Records Law).
- (b) All requests to inspect or copy Public Records made to the Contractor relating to the Contract must be sent directly to the Department. Notwithstanding any provisions to the contrary, disclosure of any records made or received by the State in conjunction with the Contract are governed by Public Records Law.
- (c) If the Contractor has a reasonable, legal basis to assert that any portion of any records submitted to the Department are confidential, proprietary, trade secret, or otherwise not subject to disclosure ("Confidential Information" or "Trade Secret") under Public Records Law or other authority, the Contractor must simultaneously provide the

Department with a separate redacted copy of the records the Contractor claims as Confidential Information or Trade Secret and briefly describe in writing the grounds for claiming exemption from the Public Records Law, including the specific statutory citation for such exemption. This redacted copy of the records shall contain the Contract name and number and shall be clearly labeled “Confidential Information” or “Trade Secret.” The redacted copy of the records should only redact those portions of the records that the Contractor claims are Confidential Information or Trade Secret. If the Contractor fails to submit a redacted copy of records it claims are Confidential Information or Trade Secret, such action may constitute a waiver of any claim of confidentiality.

- (d) The Department will respond to Public Records requests for records marked as “Trade Secret” pursuant to Section 624.4213, F.S., in accordance with the provisions specified in that statute. If the Department receives a Public Records request, and if records that have been marked as “Confidential Information” or “Trade Secret” are responsive to such request, the Department shall provide the Contractor-redacted copies to the requester. If a requester asserts a right to the portions of records claimed as Confidential Information or Trade Secret, the Department shall notify the Contractor that such an assertion has been made. It is the Contractor’s responsibility to assert that the portions of records in question are exempt from disclosure under Public Records Law or other authority. If the Department becomes subject to a demand for discovery or disclosure of the portions of records the Contractor claims as Confidential Information or Trade Secret in a legal proceeding, the Department shall give the Contractor prompt notice of the demand, when possible, prior to releasing the portions of records the Contractor claims as Confidential Information or Trade Secret (unless disclosure is otherwise prohibited by applicable law). The Contractor shall be responsible for defending its determination that the redacted portions of its records are Confidential Information or Trade Secret. No right or remedy for damages against the Department arises from any disclosure made by the Department based on the Contractor’s failure to promptly legally protect its claim of exemption and commence such protective actions within ten (10) days of receipt of such notice from the Department.
- (e) The Contractor shall ensure that exempt or confidential and exempt Public Records are not disclosed except as permitted by the Contract or by Public Records Law.

12.1.3 Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

If the Contractor is a “contractor” as defined in Section 119.0701(1)(a), F.S., the Contractor shall:

- (a) Keep and maintain Public Records required by the Department to perform the service.
- (b) Upon request, provide the Department with a copy of requested Public Records or allow the Public 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) A Contractor who fails to provide the Public Records to the Department within a reasonable time may be subject to penalties under Section 119.10, F.S.
- (d) Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by Applicable Law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the Public Records to the Department.
- (e) Upon completion of the Contract, transfer, at no cost, to the Department all Public Records in possession of the Contractor or keep and maintain Public Records required by the Department to perform the service. If the Contractor transfers all Public Records to the Department 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 Public Records stored electronically must be provided to the Department, upon request from the Department's custodian of Public Records, in a format specified by the Department as compatible with the information technology systems of the Department. These formatting requirements are satisfied by using the data formats as authorized in Attachment 1 – Statement of Work, Microsoft Office Suite, or Adobe and any of the designated software formats.
- (f) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE PUBLIC RECORDS OFFICE AT:**

Telephone: (850) 414-2114
Email: DOEAPublicRecords@elderaffairs.org
Mailing Address: Office of the General Counsel
Florida Department of Elder Affairs
4040 Esplanade Way
Tallahassee, Florida 32399-7000

12.2 Survival

The Parties' respective obligations under this Section 12 shall survive the termination or expiration of this Contract.

13. DATA SECURITY AND CONFIDENTIALITY

13.1 Data Security, Recovery, and Damages for Non-Performance

- (a) Data Security. The Contractor, Contractor Staff, Subcontractor and Subcontractor Staff shall comply with Rule Chapter 74-2, F.A.C., in performance of this Contract. The Contractor shall provide immediate notice to the Chief Information Officer (CIO) in the Bureau of Information Systems (BIS) in the event it becomes aware of any security breach involving any unauthorized access to, transmission, or loss of any or all of the State Data and provide immediate notice to the CIO of any allegation or suspected violation of Rule Chapter 74-2, F.A.C. Except as required by Applicable Law or legal process and after notice to the Department, the Contractor shall not divulge to third parties any Confidential Information obtained by any Contractor Staff or Subcontractor Staff in the course of performing Contract work according to applicable rules, including, but not limited to, Rule Chapter 74-2, F.A.C., security procedures, business operations information, or commercial proprietary information in the possession of the State or the Department. The Contractor shall not be required to keep confidential any information that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's Confidential Information or information that is otherwise obtainable under State law as a Public Record. The Contractor is subject to costs involving any unauthorized access to, transmission, or loss of any or all of the State Data. If the State Data is related to PII, the Contractor is subject to the administrative sanctions for failure to comply with Section 501.171, F.S. If State Data will reside in the Contractor's system, the Department may conduct, or request the Contractor conduct at the Contractor's expense, an annual network penetration test or security audit of the Contractor's system(s) on which State Data resides. If the Contract is less than a year long, the State's right to conduct (or have the Contractor conduct) a network penetration test or security audit of the Contractor's system(s) on which State Data resides can be exercised at any time.
- (b) Data Protection. No State Data will be transmitted, stored, or processed outside the United States of America, regardless of method, except as required by law. Access to State Data shall only be available to approved and authorized Contractor Staff and Subcontractor staff that have a legitimate business need. Access to State Data does not include remote support sessions for devices that might contain the State Data: however, during remote support sessions the Department requires the Contractor to escort the remote support access and maintain visibility of the support staff's actions. Requests for remote access shall be submitted to the Department's Help Desk. With approval, third parties may be granted time-limited terminal service access to information technology resources as necessary for fulfillment of related responsibilities. Requests for remote access may be submitted to the Department for approval. Remote connections are subject to detailed monitoring via two-way log reviews and the use of other tools. When remote access needs change, the Contractor

shall promptly so notify the CIO, notified and access shall be promptly removed or changed.

- (c) Encryption and Remote Access. The Contractor shall encrypt all data transmissions containing Confidential information. Remote data access must be provided via a trusted method such as SSL, TLS, SSH, VPN, IPSec, SFTP or a comparable protocol approved by the Department. Confidential information must be encrypted using an approved encryption technology when transmitted outside the State's network or over a network or other medium not entirely owned or managed by the Department.
- (d) Breach and Negligence. The Contractor agrees to protect, indemnify, defend and hold harmless the Department, Eligible Entities, and their respective departments, divisions, offices, commissions, officers, employees, contractors, representatives, and agents (State Indemnitees) from and against any and all costs, claims, demands, damages, losses and liabilities arising from or in any way related to the Contractor's breach of data security or the negligent acts or omissions of the Contractor, Contractor Staff, Subcontractor and Subcontractor Staff related to this subsection.
- (e) General Requirements. All Contractor Staff or Subcontractor staff performing work under the Contract must comply with all security and administrative requirements of the Department. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor, Contractor Staff, or Subcontractor staff in the course of performing Contract work.
- (f) Specific Security Requirements. The parties shall not use or further disclose the data specified in this Contract except as permitted by this Contract or as required by federal law, including the Health Information Portability and Accountability Act (HIPAA) (45 CFR 160, 162 and 164) and the Health Information Technology Economic and Clinical Health (HITECH) Act, their associated regulations, , 42 CFR 431, Subpart F (Safeguarding Information on Applicants and Beneficiaries), Chapter 74-2, Florida Administrative Code (Florida Cybersecurity Standards), and applicable State law. Disclosure to the Department is expressly permitted under Federal law for complying with State law, and each of the State and the Department is considered an authorized "public official" rather than a "covered entity" under federal law, see 45 C.F.R. 164.512 and 45 C.F.R. 164.514. The parties have established appropriate administrative, technical, and physical safeguards to protect the confidentiality of, and to prevent unauthorized use or access to, the data specified in this Contract. Further, the uses and disclosures shall be in accordance with applicable State law.
- (g) Data Submission and Databases. The Contractor shall maintain and secure adequate back-up files of all documentation and programs utilized to process State Data submissions. The Contractor shall develop data security procedures to ensure that only authorized access to data submissions and databases occurs by Contractor Staff or Subcontractor staff for contracted activities. The Contractor shall develop data

security procedures to ensure no unauthorized access to data submissions and databases by individuals occurs other than those authorized by the Contract or designated representatives of the Department.

- (h) State Data and Shared Data. State Data and shared data will be made available to the Department upon its request, in the form and format reasonably requested by the Department. The Contractor and its representatives will not sell, assign, lease, or otherwise dispose of any State Data to third parties or commercially exploit State Data other than for the benefit of the Department and State Agencies as authorized by the Contract, nor will any Contractor Staff or Subcontractor Staff other than those having a strict need to know, be given access to the State Data. The Contractor will not possess or assert any lien or other right against or to any State Data in any circumstances.
- (i) Security Level and Data Release. At the initiation of the Contract, the Contractor shall meet or exceed level of security required of the Department's Administrative Policies and Procedures (Policies) 420.10, Department of Elder Affairs Management Information Systems Policy and Procedures and 420.51, DOEA Information Security Policy, a copy of which will be provided by the Contract Manager upon request. Further, any failure on the part of the Contractor or a Subcontractor to maintain security which results in a release of State Data will subject the Contractor to possible termination and to the administrative sanctions for failure to comply with Section 501.171, F.S., together with any actual costs incurred by the Department or State resulting from the breach of security.
- (j) Technology/Systems Disaster Recovery.
 - (i) Any monetary losses due to nonperformance from providing secure availability to the Contractor's web-based system, the stability of the system, adequate safeguards to prevent unauthorized entry into the Department's account, and response to acts of God will be reimbursed at the same amount as the loss.
 - (ii) The Contractor shall perform a successful Disaster Recovery test yearly and shall annually provide the summary statement of an independent auditor as to the successful performance of such Disaster Recovery test.

13.2 Data Management

- (a) The Contractor will not make (and will not permit any Subcontractor to make) any changes that weaken any technical, organizational or security configurations, controls, or protocols in place to safeguard State Data without the Department's prior written approval.

- (b) The Department will have the right to establish backup security for any State Data and to keep backup copies of State Data in its possession if it chooses. At the Department's request, the Contractor will provide the Department with downloads of State Data to enable the Department to maintain such backup copies.
- (c) If the Department authorizes Contractor Staff or the Contractor to allow Subcontractor Staff to access and use (whether directly or remotely) any State computer or electronic data storage systems, the Contractor will limit such access and use solely to the authorized Contractor Staff or Subcontractor Staff and to their performance of authorized functions. All user identification numbers and passwords disclosed to the Contractor, Contractor Staff, Subcontractor, or Subcontractor Staff for, and any information obtained by such entity or staff as a result of, their access to and use of such computer and electronic storage systems will be deemed to be, and will be treated as, State Data.
- (d) If the Department reasonably determines that any Contractor Staff or Subcontractor Staff pose a security concern, the Department will have the right to deny such Contractor Staff access to State systems and State Data.
- (e) To the extent the Contractor removes any device or storage medium containing State Data and/or Confidential Information from service, the Contractor will permanently destroy the storage media or securely erase the State Data and Confidential Information it contains in accordance with applicable Department Policies. The Contractor shall notify the Department in writing when the destruction or erasure is complete and offer the Department the opportunity to examine the device or storage media to ensure that all State Data and Confidential Information have been removed. The Contractor will not use or re-use media on which State Data has been stored for any purpose unless such State Data and Confidential Information have been securely erased.

13.3 Contract Provisions Specific to Hosting of State Data

At least once a year during the Term of the Contract, the Contractor will engage a recognized, independent security firm to perform, as part of the Services, a formal security review or audit of any Service Delivery Centers or facilities at which the Contractor or any Subcontractor hosts any State Data. The review or audit will be carried out in conformance with the [ISO/IEC 27001 and 27002 standards] (as each may be modified or replaced). If the review or audit reveals an actual or potential vulnerability with the potential to adversely affect any State Data, the Contractor will provide a summary of the relevant findings to the Department for review and comment within ten (10) Business Days after completion of the review or audit report. The Contractor will also correct (or cause the appropriate Subcontractor to correct) any security vulnerabilities identified in the report and within the Contractor's (or a Subcontractor's) scope of responsibility or control within thirty (30) days and report the actions taken and results achieved in a follow-up report delivered to the Department promptly after the actions are taken.

13.4 Data Access.

- (a) Background Checks and Screening. All Contractor Staff and Subcontractor Staff who will have access to State Data will undergo the background checks and screenings described in Section 23.4.
- (b) Cooperation with the State and Third Parties. The Contractor agrees to cooperate with the following entities: (i) the State, (ii) the State's other subcontractors, (iii) the State's agents, including properly authorized governmental entities, (iv) the State's authorized third parties, such as technology staff under contract with the State, and (v) other properly authorized individuals who directly or indirectly access State Data on behalf of any of the entities listed in this section. The Contractor shall also provide reasonable access to Contractor Staff and Contractor's systems and facilities, to these same entities, when reasonably requested by the Department. The Contractor agrees to impose these same requirements on all Subcontractors performing the work of this Contract.

13.5 Supplemental Obligations Regarding Personal Information

- (a) Without limiting the generality of Section 13, the Contractor shall only use personally identifiable information as strictly necessary to provide the Services and shall disclose such information only to Contractor Staff or Subcontractor Staff who have been authorized to access such information. The Contractor shall comply at all times with all Laws applicable to such personally identifiable information.
- (b) Personally Identifiable Information (PII) is defined as any information that, either individually or when combined with other information, could be used to distinguish or trace an individual's identity, such as their name, address, telephone number, social security number, date and place of birth, mother's maiden name, account information, and/or biometric records, including information regarding an individual's education, financial transactions, medical history, criminal history and employment history. This definition also includes "personal information" (Personal Information) as defined in Section 501.171, F.S. For purposes of this section, the term PII does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records or widely distributed media.
- (c) The Contractor will comply with all laws applicable to PII and the handling, security and transfer thereof in any relevant jurisdictions, whether such laws are in place as of the Effective Date of the Contract or are enacted, adopted, or otherwise come into effect during the Term of the Contract. The Contractor will be and will remain familiar and in compliance with all laws and changes in laws applicable to (i) the organizational and security measures to be implemented and maintained by the Contractor to safeguard PII, and (ii) the restrictions or prohibitions on the use or disclosure of PII by the Contractor, Contractor Staff, Subcontractor, and Subcontractor Staff. If the Parties are unable to agree on the impact of any such Applicable Law or changes in such laws on the Contractor's performance of and/or Department's receipt

and use of the Services, the Department will retain the right, in its sole discretion, to interpret such laws or change in laws.

- (d) The Contractor will not use PII for any purpose other than the fulfillment of the Contractor's obligations under the Contract. The Contractor will take appropriate action to cause all Contractor Staff, Subcontractor Staff, and other representatives of the Contractor having access to PII to be advised of, receive training on, and comply with the terms of this subsection 13.5 regarding their handling of PII.
- (e) When interfacing with Department or other State staff regarding PII, the Contractor will only disclose or transmit PII to those Staff who have been authorized to receive it by the Department.
- (f) If Contractor Staff or Subcontractor Staff will have access to "protected health information" (as such term is defined by the HIPAA privacy rule), the Contractor and each Subcontractor will execute a business associate agreement with the Department, as applicable, in a form acceptable to the Department. The Contractor will be responsible under the Contract for any failure of the Contractor or a Subcontractor to comply with the terms of the business associate agreement or applicable laws referenced therein in the same manner and to the same extent as if the failure was by the Contractor.
- (g) If the Contractor has knowledge of any unauthorized disclosure of or access to PII, the Contractor will, in addition to its other obligations under this subsection 13.5, cooperate with the Department in providing any notices that the Department deems appropriate.
- (h) To the extent any unauthorized disclosure of or access to PII is attributable to a breach of the Contractor's obligations under the Contract, the Contractor will bear the costs incurred by the Contractor (and other entities and persons for which the Contractor is responsible) in complying with its legal obligations relating to such breach and, in addition to any other damages for which the Contractor may be liable under the Contract, the costs incurred by the Department in complying with Section 501.171, F.S., in responding to such breach, to the extent applicable: (i) the cost of providing notice to affected individuals, (ii) the cost of providing notice to government agencies, credit bureaus, and/or other required entities, (iii) the cost of providing affected individuals with credit monitoring services for up to 12 months (or such longer period as may be required by applicable law), to the extent the incident could lead to a compromise of the data subject's credit or credit standing, (iv) call center support for such affected individuals for a specific period of up to 12 months (or such longer period as may be required by applicable law), (v) the cost of any other measures required under applicable law, and (vi) any other losses for which the Contractor is liable under the Contract.

14. OWNERSHIP AND USE RIGHTS

14.1 State Data

The State is and will remain the owner of all State Data made available by the State to the Contractor or its agents, Subcontractors or representatives pursuant to this Contract, and all modifications to it (even if made by the Contractor or a Subcontractor), regardless of whether the Contractor or the Department is in possession or control of the State Data. The Contractor and its Subcontractors will not use the State Data for any purpose other than providing the Services, nor will any part of the State Data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor or any Subcontractor. The Contractor and its Subcontractors will not possess or assert any lien or other right against State Data.

14.2 Hardware and Equipment

Except as this Contract expressly provides otherwise, as between the State and the Contractor (or its Subcontractor), the party that furnishes hardware or equipment for its or another party's use during performance of the Project will be and remain the owner (or lessor, where applicable) of the hardware or equipment furnished by it.

14.3 Rights in Deliverables and Work Products

Deliverables and Work Products prepared by the Contractor and its Subcontractors may consist of or contain any (or any combination) of the following: (i) Background IP (including COTS software, templates, frameworks and other materials) owned by the State, the Contractor, a Subcontractor, or a third-party licensor; (ii) Custom IP developed during performance of the Contract specially for (or by) the State; and (iii) customizations or addons to, or derivative works of, a party's Background IP. Regardless of who creates or participates in the creation of the foregoing, ownership of and use rights in them shall be as set out in the following subsections of this Section 14.3, consistent with the requirements of Section 287.0571(5)(k), F.S., which provides that any copyrightable or patentable intellectual property produced as a result of work or services performed under the Contract, or in any way connected with the Contract, shall be the property of the State, with only such exceptions as are clearly expressed and reasonably valued in the contract. In addition, ownership of and use rights shall be consistent with the requirements of 45 CFR 95.617(b) which provides that the U.S. Department of Health and Human Services (hereinafter referred to as an "Eligible Entity") reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation. In the case of any Solution component, Deliverable, or Work Product for which the Department or other State Agency enters into a signed license agreement with the owner or licensor thereof, such license agreement's terms will supersede those set forth herein that would otherwise apply.

14.3.1 Ownership of Background IP

Notwithstanding anything to the contrary in this Contract, including in a circumstance in which Background IP is incorporated into a Deliverable or Work Product that, as a whole, will be owned by a party other than the owner of the Background IP, the owner of any Background IP used in the performance of the Contract will remain the owner of such Background IP, which will be subject to such rights and licenses as are granted herein. All other rights in Background IP are reserved by its owner.

14.3.2 Solution Requirements

The Department communicated many of the State's Solution Requirements in the ITN. During the course of the Project, the descriptions and documentation of the Solution Requirements may evolve and take different forms. Regardless of whether State staff or representatives, Contractor Staff, or Subcontractor Staff prepare such descriptions and documentation, ownership of them (and all associated Intellectual Property Rights) will immediately vest in the Department or the State (or, when applicable, other Eligible Entity) at the moment of their creation, with the Contractor, upon their Acceptance by the Department, receiving a Commercial Exploitation License without any warranties express or implied.

14.3.3 Solution Designs

The Contractor will be responsible, as part of the Services, for translating the Solution Requirements into functional and technical Solution Designs. Inasmuch as the Solution Designs will reflect the contemplated operationalization of the State-owned Solution Requirements, ownership of the Solution Designs (and all associated Intellectual Property Rights) will immediately vest in the Department (or, when applicable, other Eligible Entity) at the moment of their creation, with the Contractor receiving a Commercial Exploitation License to them upon their Acceptance by the Department.

14.3.4 COTS Software

- (a) As indicated in Section 14.3 above, COTS software constitutes Background IP and, as such, it will be and remain the property of its owner. Unless this Contract expressly provides otherwise, for purposes of this Contract, any modifications or updates to, or derivative works of, COTS software produced or delivered under this Contract will be owned by the owner of the COTS software and will, upon its creation, be deemed to be part of the COTS software licensed to the State under the applicable license agreement.
- (b) COTS Software comprising the Baseline Software provided pursuant to this Contract for the Solution is being licensed to the State pursuant to the license agreement(s) set forth in Attachment 7 – Baseline Software License Agreement(s). The Contractor is required to include in Attachment 1 – Statement of Work, a list of all other COTS software required for the Solution – i.e., to make the Solution operable on a standalone basis – for which the State is responsible for acquiring the necessary licenses. If any

additional COTS software is required in order for the Solution to meet the requirements of this Contract, the Contractor is responsible for acquiring the necessary licensed quantities of such COTS software for the State at no additional charge.

14.3.5 Custom IP

- (a) Ownership of all Custom IP, including Configurations and software interfaces, developed or made in the course of performance of this Contract, (and all associated Intellectual Property Rights) will immediately vest in the Department or State (or, when applicable, other Eligible Entity) at the moment of their creation, with the Contractor receiving a Commercial Exploitation License to them upon their Acceptance by the Department.
- (b) Any Contractor Tools that qualify as Background IP will be and remain owned by their respective owner. In the case of any Contractor Tools that are not Deliverables or COTS products but which do constitute Deliverable Supplements, the Contractor hereby grants to the State a Deliverable Supplement License with respect to them. In the case of any Contractor Tools that do not constitute Deliverables or Deliverable Supplements, whether or not such Contractor Tools are COTS product, the Contractor hereby grants to the State a Project License with respect to them, as and to the extent any State staff or representatives reasonably need to access and use them during performance of the Project. In addition, if the Contractor specifically acquires any Contractor Tools that are COTS products for performance of the Project, such that the Contractor is compensated directly or indirectly for the acquisition cost of such Contractor Tools, the Contract shall assign all of the Contractor's rights in and to such Contractor Tools to the Department at the completion (or earlier termination) of the Project. If the State desires to continue using, after the completion (or earlier termination) of the Project, any Contractor Tools that are COTS products and qualify as Background IP (i.e., Contractor Tools not acquired specifically for performance of the Project and for which the State is not charged, directly or indirectly, for the acquisition cost of such Contractor Tools), the State will be responsible for acquiring its own licenses for them. In such a case, if the Contractor or its Subcontractor is the manufacturer or licensor of the desired Contractor Tools, they will be offered to the Department (and other Eligible Entities) on a non-discriminatory basis (i.e., on terms no less favorable than the terms on which they are offered generally to other public entities purchasers or licensees).
- (c) The Contractor Tools to which the Department has been granted a Deliverable Supplement License will be made available for access and use by the Department (and other Eligible Entities, where applicable) in a commercially reasonable form and manner.

14.3.6 Other Deliverables and Work Products

Any other Deliverables and Work Products that are not governed by Sections 14.3.1 – 14.3.5 above (and all associated Intellectual Property Rights) will be owned solely by the State from the moment of their creation, with the Contractor receiving a Commercial Exploitation License to such other Deliverables upon their Acceptance by the Department and, in the case of such other Work Products, upon their creation. In the case of any Deliverable or Work Product (or portion thereof) that is not owned by the State as provided herein, unless the Department or other Eligible Entity has entered into a written license agreement with the licensor or owner thereof, the State is hereby granted a Deliverable License with respect thereto, commencing on the creation of the Deliverable or Work Product or, if later, the Contract Effective Date.

14.3.7 Transfer of Ownership and IP Rights to the Department or an Eligible Entity

All Deliverables and Work Products that this Contract provides are to be owned by the State shall be deemed to be “works made for hire” under 17 U.S.C. Section 101 to the extent they qualify as such, and all copyrights subsisting in such “works made for hire” shall be owned exclusively by the Department (or, when applicable, an Eligible Entity) pursuant to its statutory authority, except as provided above. To the extent that any Deliverable or Work Product that this Contract provides is to be owned by the State does not qualify as a “work made for hire” under applicable copyright law, the Contractor hereby irrevocably assigns, transfers and conveys to the Department (or, when applicable, an Eligible Entity), without further consideration, all of its right, title, and interest (including all Intellectual Property Rights) in and to such Deliverable or Work Product. The Contractor will flow down all applicable provisions of this Section 14 to its Subcontractors to ensure that the Contractor can fulfill its obligations hereunder. The Contractor shall give the Department (or an Eligible Entity), without additional charge, all reasonable assistance requested by it to perfect its ownership interests, including the execution and delivery of formal documents assigning title to the Department (or an Eligible Entity).

14.3.8 Additional Terms Applicable to Commercial Exploitation Licenses

- (a) The commercial exploitation licenses granted by the Department under this contract are on an ‘as-is, where-is’ basis without any representations or warranties of any kind or nature, including the implied warranties of merchantability and fitness for a particular purpose. All use and exploitation of the commercial use licenses and the intellectual property that is subject to them by, on behalf of, or through the Contractor, are at the Contractor’s sole risk and expense.
- (b) The Department reserves the right to inspect at any time any materials that are subject to a Commercial Exploitation License to verify that such materials do not contain any identifiable reference or connection to the Department or other Eligible Users and do not contain any State Data.

14.4 Contractor Disclosure Obligation

Following the Contractor's (or a Subcontractor's) use of any Deliverable Supplement to perform any of the Services, the Contractor will promptly disclose its use of the Deliverable Supplement to the Department and provide relevant details in writing.

14.5 Intellectual Property Rights Agreements with Subcontractors and Contractor Staff

The Contractor is responsible for having in place with all Subcontractors Staff and Contractor Staff (either directly or indirectly through their respective employers) and enforcing such agreements respecting Intellectual Property Rights and moral rights as are necessary to give full effect to this Contract Section 14.

14.6 Licenses and Rights Survive Bankruptcy and Insolvency

All licenses and rights of Use granted to the Department or an Eligible Entity (or any other Users authorized by them) under or pursuant to the Contract are intended to and will survive any bankruptcy or insolvency proceedings involving the Contractor or its Subcontractor and will be deemed to be, for the purposes of Section 365(n) of the U.S. Bankruptcy Code, licenses to rights in "intellectual property" as defined under the U.S. Bankruptcy Code.

14.7 Non-interference

Nothing in the Contract will be deemed or construed to prevent the Contractor or its Subcontractors from carrying on their businesses or developing for themselves or others Materials that are similar to or competitive with those produced as a result of the Services provided such Materials do not contain or disclose any State Data or Confidential Information or proprietary information of the State or any Eligible Entity or otherwise misappropriate or infringe the Intellectual Property Rights of the Department or any Eligible Entity.

14.8 Software Source Code Escrow

- (a) The Contractor and the Department shall execute concurrently with the execution of this Contract a software source code escrow agreement in a Department-approved form with a reputable third-party escrow company, pursuant to which the Contractor (or applicable Software Licensor) will make periodic deposits of the then-current documented source code (together with its associated executable binary code) for all software included as part of the Solution (whether licensed COTS software or software developed under this Contract) for which the source code has not otherwise been delivered to the Department. The Contractor shall maintain the escrow arrangement in effect, at the Contractor's cost and expense, throughout the term of this Contract and for a period of at least two years after the cessation of all Services provided under this Contract, including Transition Services, and a Contractor executive shall certify annually to the Department in writing that the escrow remains in effect and in compliance with the terms of this Section. The escrow agreement shall

constitute an “agreement supplementary” to this Contract (as that term is used in 11 U.S.C. Section 365(n), as amended).

- (b) The Contractor shall make deposits into the software escrow corresponding to the complete then-current version of the Solution implemented in production in readable form for the Department within ten (10) Business Days after each release of the Solution (or part thereof), or any subsequent update or new release or version thereof, is implemented in production by or for the Department or other Eligible Entity. Promptly upon making each deposit into the escrow, the Contractor will give the Department written notice describing the materials deposited.
- (c) If the Contractor fails to make any escrow deposit as required by this section and/or the escrow agreement within twenty (20) Business Days after receipt of written notice (which notice may come from the Department or the escrow agent), such failure shall be deemed a material breach of this Contract, in respect of which the Contractor shall pay to Department liquidated damages in the amount of one thousand dollars (\$1,000) per day for each day thereafter that such failure continues. For the avoidance of doubt, the Contractor’s payment of the liquidated damages set forth in this section shall not relieve the Contractor from its obligation to make escrow deposits as required herein.
- (d) The escrow agreement shall contain language providing that the escrow agent shall release the relevant materials deposited into the escrow upon the written request of the Department if any of the release conditions identified in the escrow agreement occur, which release conditions shall include at least the following:
 - (i) The Contractor or any licensor of COTS software forming part of the Solution that ceases to function as a going concern, to operate in the ordinary course of business, to carry on that part of its business which relates to its escrowed materials, or to offer and provide (either itself or through an authorized third party) continuing maintenance and support for the software that is subject to the escrow;
 - (ii) The Contractor or any licensor of COTS software forming part of the Solution (a) files any petition in bankruptcy, (b) has an involuntary petition in bankruptcy filed against it which is not challenged within thirty (30) days and dismissed within ninety (90) days, (c) becomes insolvent, (d) makes a general assignment for the benefit of creditors, or (e) has a receiver appointed for its assets;
 - (iii) The Contract is terminated by the Department for cause; or
 - (iv) The Contractor or any licensor of COTS software forming part of the Solution fails to make a deposit in accordance with this section within thirty (30) days of written notice that it is required to do so.

14.9 Mental Impressions

The Staff of each Party (and its affiliated entities) may use and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned by them during the course of performing their respective tasks under the Contract and retained by them as mental impressions provided that in doing so they do not disclose Confidential Information of the other Party in violation of the Contract's terms and conditions or otherwise misappropriate or infringe the Intellectual Property Rights of the other Party (or its affiliated entities) or third parties who have licensed or provided materials to the other Party (or its affiliated entities). As used in this paragraph, "affiliated entities" means and includes the Contractor's corporate affiliates and its Subcontractors when referring to the Contractor and it means and includes other Eligible Entities when referring to the Department.

15. REPRESENTATIONS AND WARRANTIES

15.1 Contractor's Representations and Warranties

The Contractor represents and warrants to the Department as follows:

- (a) The Contractor has the requisite power and authority to enter into and perform the Contract without the need to seek any further approvals or authorizations.
- (b) The Contractor is not (as of the Effective Date of the Contract) under any obligation or restriction that would interfere in any way or conflict with it providing the Services and performing its other obligations under the Contract, and the Contractor will not assume any such obligation or restriction during the Term; provided, however, that if despite the foregoing representation and warranty, the Contractor, Contractor Staff, Subcontractor, or Subcontractor Staff becomes aware of an actual or potential conflict of interest relating to the Contract, the Contractor will immediately inform the Department and, if requested by the Department, cease any conflicting work or assignment or otherwise resolve the conflict.
- (c) Prior to entering into the Contract, the Contractor has conducted all due diligence necessary for the Contractor to satisfy itself that it is able to provide the Services under the Contract in accordance with the requirements of the Contract for the charges set forth herein.
- (d) The Contractor will provide the Services in accordance with the reasonable direction provided by the Department in order to minimize disruption to State operations.
- (e) The Contractor is qualified and registered to conduct business in all locations where required.
- (f) All written information furnished to the Department by the Contractor in connection with this Contract, including the Contractor's Reply, is to the best of the Contractor's

knowledge and belief true, accurate, and complete, and does not omit any material facts the omission of which would cause the Reply to be misleading.

- (g) The Contractor possesses or has obtained (or will obtain at the Contractor's expense) all necessary rights and licenses to provide the Services in accordance with the Contract and convey to the Department (or, when applicable, an Eligible Entity) the ownership rights and grant the rights and licenses set forth in Section 14, free from any claims of infringement, misappropriation, or violation of another party's intellectual or industrial property rights.
- (h) The Services will be of the type and quality described in the Statement of Work and will be performed by adequate numbers of qualified individuals with suitable training, education, experience, and skill, in a diligent and professional manner and in accordance with applicable industry and Department standards and practices.
- (i) The Contractor will perform the Services in a manner that complies with all applicable laws, rules or regulations, and contracts with third parties, as further specified in Section 23.4 Compliance with Laws. The Contractor will be responsible for obtaining and maintaining at its expense any business licenses or permits required in the operation of its business and performance of the Services.
- (j) Each Deliverable delivered under this Contract will be free from all liens, claims, and encumbrances and during its Warranty Period will, in all material respects, conform to and perform in accordance with its requirements and specifications as set forth in the Statement of Work or other Contract Attachments, or as developed and agreed during the course of the Project, the Warranty Period for a Deliverable will start on the day it is tendered for the Department's acceptance and will continue until the later of (i) the Department's Acceptance of the Deliverable, or (ii) in the case of operational Deliverables forming part of the Solution, four (4) months after the Department's go-live implementation in production of the Solution release containing the Deliverable, or such longer period as is provided in the next paragraph for Non-Routine Business Functions. In the event of a breach of the foregoing warranty, the Contractor will, at no charge to the Department, promptly correct the affected Deliverable(s) or take such other actions as may be required for compliance with the foregoing warranty, including verifying the successfulness of the corrective measures by appropriate testing or retesting of affected Solution components. For the avoidance of doubt, if the go-live implementation of a Solution release containing a Deliverable under warranty causes defects or problems to occur in or with other Deliverables or Solution components not then under warranty, such defect or problem shall be deemed to constitute a breach of the foregoing warranty.
- (k) The Contractor acknowledges and agrees that certain business functions of the Solution are operated in production at a frequency that will not allow such functions to be executed during the applicable Warranty Period (the "Non-Routine Business Functions") And, accordingly, that the Warranty Period for any Deliverable that

performs one or more Non-Routine Business Functions will extend until thirty (30) days after the last Non-Routine Business Functions implemented via such Deliverable runs in production without experiencing any Severity Level 1 or 2 problems.

- (l) All components of the Solution will be compatible and will properly inter-operate and work together as a fully integrated system, and the Solution as a whole will be fit for its intended purposes as described in the ITN and herein.
- (m) The Contract Attachments identify all equipment and software necessary for the Solution to perform and operate in compliance with the terms and other standards of performance contained in this Contract.
- (n) All Deliverables and Solution components will accurately recognize, calculate, process and store all same-century and multi-century formulas, dates and date notations (including leap years), will resolve ambiguities in date input and output and will have capacity to inter-operate with other products used by the State that may deliver to or receive records from the Deliverables, including backup and archived data. All Deliverables and Solution components that process multiple currency denominations will correctly input, store, process, convert, retrieve, output and display monetary amounts.
- (o) The Solution will be accompanied by documentation that covers all of the Solution's functions and features and is sufficiently instructive to enable a typical State user to use the Solution effectively and efficiently.
- (p) Contractor Staff or Subcontractor Staff will not intentionally, knowingly, or negligently introduce or allow the introduction of any Malware into the State's Operating Environment or into any State Data or Deliverable. If Malware is found to have been introduced into the State's Operating Environment or into any State Data or Deliverable as a result of a breach of the foregoing warranty, the Contractor will be required to use best efforts, at no additional charge to the Department, to assist in eradicating the Malware and reversing its adverse effects and, if the Malware causes a loss of State Data or operational efficiency, to assist the Department (and/or applicable interfacing users authorized by the Department) in mitigating and reversing such losses.
- (q) Neither the Contractor nor any Subcontractor will activate, or cause or permit to be activated, any code, devices, mechanisms, or processes that would have the effect of disabling, shutting down, or otherwise disrupting all or any portion of the Solution or the State's Operating Environment.
- (r) If, under this Contract, the Contractor procures any equipment, software or other products for the State (including equipment, software and other products manufactured, re-marketed or otherwise sold by the Contractor under the Contractor's name), then the Contractor shall assign or otherwise transfer to the

Department or its designees, or afford the State the benefits of, any manufacturer's warranty for such products.

- (s) The Contractor shall ensure that, as to its products and services and those it develops for the Department, the electronic and information technology accessibility requirements of Section 508 of the Rehabilitation Act Amendments, 29 USC 794 are met, if applicable. The Electronic and Information Technology standard can be found at: <http://www.section508.gov/>.

15.2 State Warranty and Covenant

In the event the Contractor is required in the course of performing the Services to use or modify any State-licensed third-party software (other than Third Party Software listed in Attachment 1 – Statement of Work) made available to the Contractor for that purpose, the Department warrants and covenants that it will acquire or has acquired the necessary approvals and license rights for the Contractor to perform such Services. In any case, the Contractor shall request approval in writing from the Department prior to using or modifying any such third-party software.

15.3 Disclaimer

THE FOREGOING EXPRESS WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF APPLICABLE LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY.

16. INSURANCE

16.1 Coverage

The Contractor shall purchase and maintain insurance at the Contractor's expense for at least the following types and amounts of insurance coverage, unless otherwise approved by the Department's Contract Manager:

- (a) Commercial General Liability Insurance written on a form at least as broad as Insurance Services Office commercial general liability coverage form CG 00 01 04 13, or another "occurrence-based" form providing equivalent coverage and approved in writing by the Department, providing premises/operations liability, contractual liability, products/completed operations liability, property damage (including loss of use thereof) liability, personal and advertising injury liability, and bodily injury and death liability coverages, with minimum limits equal to the greater of: (i) the limits set forth in the Contractor's commercial general liability policy; or (ii) the following amounts:

\$2,000,000 general aggregate (other than products-completed operations)

\$2,000,000	products-completed operations aggregate limit
\$1,000,000	personal and advertising injury limit
\$1,000,000	per occurrence limit
\$100,000	fire damage limit (any one fire)
\$5,000	medical expense limit (any one person)

The Department and the State will be added by endorsement or included under a blanket endorsement to this coverage as additional insureds on a primary and noncontributory basis.

- (b) Workers Compensation Insurance (including workers' disability compensation and other similar benefits) covering the Contractor's employees fully in compliance with Chapter 440, F.S., and in an amount not less than the limits required by law, and Employer's Liability Insurance covering the Contractor's employees in an amount not less than \$500,000 each accident, \$500,000 each employee-disease, and \$500,000 policy limit-disease. A non-resident Subcontractor shall have insurance for benefits payable under Florida's Workers' Disability Compensation Law for any employee resident of and hired in Florida; and as respects any other employee protected by workers' disability compensation laws of any other state, the Contractor and its Subcontractors shall have insurance or participate in a mandatory state fund to cover the benefits payable to any such employee. The Contractor hereby waives all rights of recovery against each of the Department and the State arising out of claims made under the workers' compensation or employers' liability insurance required to be maintained under this Contract, and all such insurance shall include, by endorsement or otherwise, a waiver of subrogation in favor of the Department and the State.
- (c) Professional Liability Insurance issued to and covering the liability of the Contractor for errors or omissions committed by the Contractor, its agents and employees, in the performance of this Contract. The policy shall have limits of liability of not less than \$1,000,000 per claim. If such insurance is written on a claims-made basis, the Contractor shall maintain and keep in force and effect such insurance for five (5) years after the later of the completion of the Services, final payment, or earlier termination of this Contract.
- (d) Employee Fidelity and Computer Crime Insurance, providing coverage for loss arising from fraudulent or dishonest acts committed by the employees of the Contractor or its agents, acting alone or in collusion with others, in a minimum amount of \$1,000,000 per loss. The Department and the State will be added to this coverage as joint loss payees for all claims arising out of, or related to, this Contract.

- (e) Business Automobile Liability Insurance issued on a form at least as broad as ISO business auto coverage form CA 00 01 10 13, or other form providing equivalent coverage, approved by the Department in writing, including coverage for owned, hired, borrowed and non-owned vehicles with minimum limits equal to the greater of: (i) the limits set forth in the Contractor's commercial automobile liability policy; or (ii) \$1,000,000 per accident combined single limit of \$1,000,000 per occurrence for bodily injury, death and property damage.
- (f) Umbrella Liability Insurance with minimum limits equal to the greater of: (i) the limits set forth in the Contractor's umbrella liability policy; or (ii) \$15,000,000 per occurrence and in the aggregate. Such insurance shall be in excess of, following form to, and otherwise satisfying the requirements of, the insurance coverages described in Sections 16.1 a), b), and e).
- (g) Property Insurance, including Extra Expense and Business Income coverage, for all risks of physical loss of or damage to the State's buildings, business personal property or other property that is in the possession, care, custody or control of the Contractor pursuant to the Contract. Such insurance will have a minimum limit adequate to cover risks on a replacement cost basis. This coverage will be endorsed to name the Department and applicable Eligible Entities whose property is covered thereby as loss payees. Such policy will provide primary coverage, without contribution from other insurance, for all losses and damages caused by the perils or causes of loss covered thereby. The Contractor agrees to have included in such policy a waiver of the insurer's rights of subrogation against the Department, Eligible Entities, any other indemnified parties under the Contract, and their respective insurers.
- (h) Property Insurance for all risks of physical loss of or damage to business personal property or other property of the Contractor and its Subcontractors (including Affiliates) used in performing the Services, including electronic data processing equipment. Such insurance will have a minimum limit adequate to cover risks on a replacement cost basis. Such policy will provide primary coverage, without contribution from other insurance, for all losses and damages caused by the perils or causes of loss covered thereby. The Contractor agrees to have included in such policy a waiver of the insurer's rights of subrogation against the Department, Eligible Entities, any other indemnified parties under the Contract, and their respective insurers.
- (i) Privacy Liability and Network Security Insurance, covering liability and expenses incurred as a result of acts, errors and omissions in connection with performance of the Services under this Contract. Such insurance shall, at a minimum, cover: data security breaches (including, without limitation, unauthorized loss, access, use or theft of information); violation of laws relating to the care, custody, control or use of such information; data damage, destruction, or corruption; or any act, omission or failure to act that results in a failure of network security (including unauthorized access to, unauthorized use of, a denial of service attack by a third party against, or

transmission of Malware or other type of malicious code to the State's computer systems). The insurance shall cover the Department and the State for all expenses for which the Contractor is liable under this Contract that the Department or the State incurs as a result of any such actual or alleged event, including: costs of defending, settling and paying judgments resulting from claims; costs of responding to regulatory or administrative investigations and legal advice therefor; regulatory fines; costs of computer forensic analysis and investigation; notification of impacted individuals; public relations, call center services, fraud consulting services, credit monitoring and protection services; and identity restoration services. The foregoing insurance shall: (i) have a minimum limit of \$5,000,000.00 (ii) address all of the foregoing without limitation if caused by an employee of the Contractor or an independent contractor working on behalf of the Contractor in connection with the Contract; (iii) have a retroactive date no later than the Effective Date; and (iv) provide coverage for wrongful acts, claims, and lawsuits anywhere in the world. The Contractor will maintain the foregoing policy in force during the term of the Contract and for a period of five years after the termination or expiration of this Contract (either as a policy in force or extended reporting period). Such insurance shall not include an insured versus insured exclusion applicable to claims against the Contractor arising out of the Services. The Department and the State will be added by endorsement or included under a blanket endorsement to this coverage as additional insureds on a primary and noncontributory basis.

- (j) Employment Practices Liability Insurance coverage of such a type and with such terms and limits that are commensurate with other companies with similar numbers of employees, including coverage for third party legal liability in favor of the Department; provided that the foregoing coverage may be through self-insurance by the Contractor.

16.2 Terms of Coverage and Other Requirements

- (a) The insurers selected by the Contractor shall have an A.M. Best rating of A- or better and a financial size category of IX or higher, or as otherwise approved in writing by the Department, or, if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency, and shall be licensed, qualified and doing business in Florida. The State is exempt from and in no way liable for any sums of money which may represent or be interpreted as a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of the Contractor.
- (b) Except as expressly provided above or agreed by the Department in a separate writing, no self-insurance coverage shall be acceptable unless the Contractor is licensed or authorized to self-insure for a particular coverage listed above in the State or is an insured member of a self-insurance group that is licensed to self-insure in the State.

- (c) Except where the Department has approved otherwise in writing, the Contractor shall require each of its Subcontractors hereunder to purchase and maintain the insurance coverages specified above in connection with the performance of work by such Subcontractors. The failure of a Subcontractor to comply with such insurance requirements does not limit the Contractor's liability or responsibility.
- (d) The Contractor shall, and will ensure that its Subcontractors shall, name the Department, the State, and such other persons or entities designated by the Department as additional insureds under the Contractor's or the applicable Subcontractor's Commercial General Liability Insurance (Section 16.1a), Umbrella Liability Insurance (Section 16.1f), and Privacy Liability and Network Security Insurance (Section 16.1i). Coverage for the additional insureds shall be primary and non-contributory with any other insurance coverage (including any deductible or self-insured retention) any additional insured may have. The coverage for the additional insureds shall be at least as broad as the coverage afforded the Contractor or applicable Subcontractor under its policies of insurance.
- (e) Within twenty (20) Business Days after the date of execution of this Contract, the Contractor shall furnish to the Department certificate(s) of insurance verifying the above insurance policies. If requested at any time by the Department, the Contractor shall provide the Department with complete copies of the policies required to be maintained hereunder, including any applicable endorsements. The Contract number must be shown on each certificate of insurance. The Department shall be given at least twenty (20) Business Days prior written notice of termination, non-renewal or reduction in limit or in scope of coverage of such policies. Neither failure by the Department to require proof of insurance from the Contractor nor the contents of a certificate of insurance provided by the Contractor shall be deemed a waiver of the Department's or any other additional insured's rights or the Contractor's obligations regarding the provision of insurance under this Contract.
- (f) Within twenty (20) Business Days following the execution of: (i) this Contract and; (ii) any Subcontract, and every year thereafter, the Contractor shall provide evidence that the Department, agents, officers, and State agencies are additional insureds under each applicable policy. Neither failure by the Department to require proof of insurance from the Contractor nor the contents of a certificate of insurance provided the Contractor shall be deemed a waiver of the Department's or any other additional insured's rights or the Contractor's obligations regarding the provision of insurance under this Contract.
- (g) The Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made policies, shall secure tail coverage for not less than five (5) years following the expiration or termination of this Contract for any reason. The minimum limits of coverage specified above are not intended and shall not be construed to limit any liability or indemnity of the Contractor under this Contract to any indemnified party or other persons. The

Parties do not intend to shift all risk of loss to insurance. The Contractor's obligation to maintain insurance coverage in specified amounts will not act as a limitation on any other liability or obligation which the Contractor would otherwise have under the Contract, nor to limit the Department's rights to exercise any and all remedies available to the Department under this Contract, at Applicable Law or in equity.

- (h) Upon request, the Contractor shall provide to the Department (and shall cause its Subcontractors to provide to the Department) certificates of insurance evidencing the required coverages, with the following provisions:
 - (i) Notice of Insurer Attempt to Cancel: The Contractor shall not allow its insurer to cancel the insured's coverage or allow it to expire without reasonable prior written notice being given to the Department.
 - (ii) Notice of Failure to Pay Premium: The Contractor shall give or require prompt notification to be given to the Department of any failure by the Contractor, to pay premiums or of any other change in the status or scope of the required coverage. The Contractor shall give or require reasonable prior written notice to be given to the Department in advance of any changes in coverage.
- (i) If the Contractor fails to pay any premium for required insurance as specified herein, or if any insurer cancels or significantly reduces any required insurance without the Department's written consent, at the Department's election (but without any obligation to do so) after the Department has given the Contractor at least twenty (20) Business Days written notice, the Department may pay such premium or procure similar insurance coverage from another company or companies; and at the Department's election, the Department may deduct the entire cost (or part thereof) from any payment due the Contractor, or the Contractor shall pay the entire cost (or any part thereof) upon demand by the Department.

17. INDEMNIFICATION

17.1 Infringement Indemnity

The Contractor shall fully indemnify, defend, and hold harmless the Department, Eligible Entities, and their respective departments, divisions, offices, commissions, officers, employees, contractors, representatives, and agents (State Indemnitees) from any claims, suits, actions, damages, losses, costs and expenses of every name and description (including legal costs and expenses), arising from or relating to an actual or alleged violation, misappropriation, or infringement by the Contractor or a Subcontractor, or by the Service or any Deliverable, of a trademark, copyright, patent, trade secret or other form of intellectual property or proprietary right or right of privacy, provided, however, that the foregoing obligations shall not apply to the extent, if any, that the claimed injury (if true) would be attributable to and would not have occurred but for Department's misuse or modification of

the Contractor's Deliverables or the Department's operation or use of the Contractor's Deliverables in a manner not contemplated by the Contract or a purchase order. If any Deliverable is the subject of such a suit, or in the Contractor's opinion, is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Department and Eligible Entities the right to continue using the Deliverable or to replace or modify it to become non-infringing without materially reducing its functionality or performance. If none of the foregoing options is available to the Contractor on commercially reasonable terms, the Contractor may take back the Deliverable (or portion thereof) that is the subject of the claimed injury, in which case the Contractor shall (i) remove and reclaim the affected Deliverable (or portion thereof), together with any other Deliverables or COTS products forming part of the Solution that cannot be used for their intended purposes as a result of the removal, and (ii) promptly refund to the Department the purchase price of the removed items, plus any additional costs required by the Department to procure replacements for such items, plus an additional sum equal to ten percent (10%) of any excess expenditure by the Department over and above the total Contract price (taking into account both the payments made by the Department to Contractor under this Contract, plus any additional expenditure made by the Department to procure the replacement items) to cover the Department's general expenses, without the need to furnish proof in substantiation of such general expenses, less a reasonable rental for past use.

17.2 Commercial Exploitation Indemnity

The Contractor shall fully indemnify, defend, and hold harmless the State Indemnitees from any claims, suits, actions, damages, losses, costs, and expenses of every name and description (including legal fees and expenses) arising out of or resulting from the exercise of the rights granted to the Contractor under a Commercial Exploitation License.

17.3 Other Indemnities

- (a) The Indemnification provisions of Section 19 of PUR 1000 shall apply with the following additional provisions: 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 Indemnitees from suits, actions, damages, and costs of every name and description, arising from or relating to:
- (i) Any claim that, if true, would arise from or be attributable to fraud, theft, or embezzlement by the Contractor, a Subcontractor, or any Contractor Staff;
 - (ii) Any claim that, if true, would arise from or be attributable to an intentional tort, willful misconduct (including intentional breach of contract), unlawful conduct, or negligence of the Contractor (or any entity or person for which the Contractor is responsible); provided, however, that the Contractor shall not be required to indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the Department or an Eligible Entity.

- (b) The duty to indemnify will continue in full force and effect notwithstanding the expiration or early termination of the Contract.

17.4 Indemnification Procedures

The procedures set forth below shall apply to all indemnity obligations under this Contract.

- (a) After receipt by the Department of notice of a claim in respect of which it will seek indemnification, the Department shall notify the Contractor of such claim in writing and take or assist the Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against the Contractor. No failure to so notify the Contractor shall relieve the Contractor of its indemnification obligations except to the extent the Contractor can demonstrate actual prejudice to its ability to defend or settle the claim. Within ten (10) days following receipt of written notice from the Department relating to any claim, the Contractor shall notify the Department in writing whether the Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying the Contractor of a claim and prior to the Department receiving the Contractor's Notice of Election, the Department shall be entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs and expenses incurred by the Department in defending against the claim during such period.

- (b) If the Contractor delivers a timely Notice of Election relating to any claim:
 - (i) The Department shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the Department about the status and progress of the defense;
 - (ii) The Contractor shall, at the request of the Department, demonstrate to the reasonable satisfaction of the Department the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract;
 - (iii) The Contractor shall periodically advise the Department about the status and progress of the defense and shall obtain the prior written approval of the Department before entering into any settlement of the claim or ceasing to defend against it, which approval shall not be unreasonably withheld; and
 - (iv) To the extent that any principles of Florida governmental or public law may be involved or challenged, the Department shall have the right, at its own expense, to control the defense of that portion of the claim involving the principles of Florida governmental or public law. Notwithstanding the foregoing, the Department may retain control of the defense and settlement of a claim by written notice to the Contractor given within ten (10) days after the Department's receipt of the Contractor's information requested by the

Department pursuant to clause (ii) of this paragraph if the Department determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the Department the Contractor's financial ability to carry out its defense and indemnity obligations. Any litigation activity on behalf of the State, or any of its subdivisions pursuant to this section, must be coordinated with the Department.

- (c) If the Contractor does not deliver a timely Notice of Election relating to any claim of which it is notified by the Department as provided above, the Department shall have the right to defend and/or settle the claim in such manner as it may deem appropriate, at the cost and expense of the Contractor. If it is determined that the claim was one against which the Contractor was required to indemnify the State, upon request of the Department, the Contractor shall promptly reimburse the Department for all such reasonable costs and expenses, or at its sole option, the Department may withhold the reasonable costs and expenses from Contractor's payments.

17.5 Sovereign Immunity

The Department will not, and does not, indemnify the Contractor for any costs or services. Any provision, implication or suggestion to the contrary is null and void. Nothing herein shall be construed as waiving the sovereign immunity of the State.

18. PERFORMANCE, PERFORMANCE MANAGEMENT, AND GOVERNANCE

18.1 Performance and Performance Management, Generally

- (a) The Department hereby engages Contractor to render the Services and to develop, configure, complete, integrate, test, and deliver the Solution so as to fulfill the stated goals and objectives of the Project. For its part, the Contractor undertakes to execute and complete the Project and the Services in their entirety, in accordance with the terms and conditions of this Contract and with the participation of Department and other State Staff or representatives as specified in this Contract and the Statement of Work. The Project will establish quality management standards, including the process, tools and a continuous improvement mindset to enable the Project to deliver the highest level of service and results. As members of the eCIRTS Project Team, all Contractor Staff or Subcontractor Staff shall adhere to these quality standards, processes, and procedures.
- (b) As part of the Services, the Contractor will proactively provide an adequate level of review and management of all work performed by Contractor Staff or Subcontractor Staff, providing management and managerial processes, Staff, trainers and subject matter experts as needed. As requested by the Department, the Contractor will submit written status reports describing the Contractor's performance, activities under this Contract and the results thereof, and meet with the Department's designated representatives to review and discuss them.

18.2 Time of Performance

- (a) The Contractor shall provide adequate numbers of suitably qualified and competent Contractor Staff or Subcontractor Staff resources to complete, and shall complete, all Services and Deliverables in accordance with the Department-approved Project schedule. The Contractor shall promptly notify the Department upon becoming aware of any circumstances (whether brought about by the Contractor, the Department, or another source or cause) that may jeopardize the timely and successful completion of any Services, Deliverables, or tasks on the scheduled due dates set forth in the latest Department-approved Project schedule. The Contractor will use best efforts to avoid or minimize any delays in performance and will inform the Department 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 has caused or will cause the Contractor to be unable to perform its obligations on time, the Contractor will use best efforts to perform its obligations on time notwithstanding the Department's delay.
- (b) Without the Department's prior written approval, the Contractor shall not use fewer Contractor Staff or Subcontractor Staff to perform the Services than set forth in the Department-approved Project staffing plan. Without limiting the generality of the preceding paragraph, if the Contractor falls behind schedule in its performance of the Services, the Contractor shall commit such additional Contractor Staff or Subcontractor Staff and other resources as may be needed to complete performance of the affected Services on time. The Contractor's commitment of such additional resources will not reduce or limit the Contractor's liability under the Contract for the delay (including for payment of any applicable Service Level Credits), and the Department will have no responsibility to pay the Contractor any additional amounts in respect of such additional Contractor Staff or Subcontractor Staff or resources.

18.3 Service Level Agreement

Attachment 10 – Service Level Agreement, sets forth the framework and associated mechanisms the Parties will use to monitor and manage certain aspects of the Contractor's performance under the Contract. Among other things, the Service Level Agreement establishes financial consequences to be payable to the Department by the Contractor, in the event of the Contractor's unexcused failure to meet applicable Service Levels as defined in the Service Level Agreement(s).

18.4 Contractor's Performance Bond

- (a) As a means of securing the Contractor's obligation to produce and deliver the Solution to the Department in accordance with the requirements of the Contract, on or before ten (10) Business Days prior to the effective date of this Contract, the Contractor shall obtain and deliver to the Department an annually renewable performance bond in a form acceptable to the Department and in an amount equal to 100 percent of the Contract's

initial term value. Any failure by the Contractor to obtain and deliver the performance bond to the Department, or to secure its renewal annually, each as required herein, shall constitute a material breach of the Contract by the Contractor. At each annual renewal of the performance bond, its face value will be made equal to the then-current Contract value. "Contract value" will not include pricing associated with renewal year options but will include any adjustments of the Contract value reflected in duly executed Change Orders. The Department reserves the right to request an update to the value of the performance bond more frequently than annually, if a Contract Amendment is signed that significantly increases the total Contract value. No payments for Services shall be made to the Contractor until the performance bond is in place. The bond shall be maintained throughout the term of the Contract, issued by a reliable surety who is licensed to do business in the State and, and must include the following conditions:

- (i) Beneficiary – The Department shall be named as the sole beneficiary of the bond. The Contractor's bond shall provide that the insurer or bonding company shall pay the amount of the bond directly to the Department promptly upon receiving the Department's written demand for payment.
- (ii) Notice of Attempted Change or Failure to Pay Premiums – The Department shall receive twenty (20) Business Days prior written notice of any attempt to cancel or to make any other material change in the status, coverage or scope of the required bond. The bond shall require the bond's issuer to give the Department prompt written notice the Contractor's failure to pay any bond premium when due.
- (iii) Premiums – The Department shall not be responsible for any premiums or assessments of the bond.
- (iv) Purpose of Bond – The purpose of the performance bond is to protect the State against any loss sustained as a result of the Contractor's failure to faithfully perform the Services in the manner required by the Contract or to fulfill the Contractor's other obligations under the Contract.
- (v) To be acceptable to the Department as surety for the performance bond, the issuer shall:
 - (1) Have a currently valid Certificate of Authority, issued by the Department of State, authorizing it to write surety bonds in Florida,
 - (2) Have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code,
 - (3) Be in full compliance with the provisions of the Florida Insurance Code, and

(4) Have a minimum Best's Policyholder Rating of A- or Performance Index Rating of VI from Best's Key Rating Guide.

(b) The performance bond shall be used solely to the extent necessary to satisfy the Contractor's financial obligations to the Department pursuant to the terms of the Contract. In no event shall the performance bond be construed as a penalty bond.

18.5 Excusable Failure

(a) Neither Party will be liable for any delay in or failure of performance of its obligations under this Contract to the extent such delay or failure is caused directly by fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in the United States; injunctions (provided the injunction was not issued as a result of any fault or negligence of the Party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such Party (Force Majeure Events); provided the non-performing Party and its contractors or Subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means, including activation and implementation of disaster recovery and business continuity. plans and programs. For the avoidance of doubt, Force Majeure Event does not include the failure of any Subcontractor of the Contractor to perform its responsibilities in a timely manner except where such failure is caused by a Force Majeure Event.

(b) For any such delay affecting the Contractor's performance to be excused, the Contractor must notify the Department of the delay or potential delay, describe its cause within three (3) Business Days after the cause first arose, and use Commercially Reasonable Efforts to perform whenever and to whatever extent is possible under the circumstances, and otherwise activate and comply with the Contractor's disaster recovery and business continuity plans and programs. If the delay is excused due to a Force Majeure Event, the Department shall approve an extension of performance for a period of time equivalent to the time lost because of any such delay. No payment shall be made by Department for any fees or expenses incurred by the Contractor by reason of such delay. The Contractor shall promptly notify the Department when the Force Majeure Event causing the delay has ceased or abated.

18.6 Relationship Management and Governance

The Project Governance Charter sets forth the general framework the Parties have agreed to use to govern and manage their relationship under the Contract.

19. STOP WORK, ACTION PLANS, AND STEP-IN RIGHTS

19.1 Issuance of a Stop Work Notice

The Department may issue, at any time, a written Stop Work Notice to the Contractor, to require the Contractor to stop all, or any part, of the work called for by this Contract for a period specified in the Stop Work Notice. Upon receipt of the Stop Work Notice, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Notice during the period of work stoppage. Within the period of the Stop Work Notice, the Department shall either: (a) cancel the Stop Work Notice; or (b) terminate the work covered by the Stop Work Notice as described in Section 20.

19.2 Cancellation of Expiration of Stop Work Notice

If a Stop Work Notice is canceled or the period of the Stop Work Notice expires, the Contractor shall resume work unless the Department has provided notice. The Parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly.

19.3 Action Plans and Step-In Rights

- (a) If the Contractor fails to perform any material obligation for which it is responsible in accordance with the requirements of the Contract (including in connection with a Force Majeure Event) or causes the Department to have good faith doubts about the Contractor's ability or intent to perform in accordance with the Contract, the Department may request an Action Plan from the Contractor in writing. If the Department does so, the Contractor will prepare and deliver an Action Plan for the Department's review and approval within three (3) Business Days after receiving the Department's request (or such longer time period as may be stated in the Department's request).
- (b) In addition to any other information the Department may reasonably request be included, the Contractor's Action Plan will contain at least the following information: (i) the root cause of the failure(s) or incident(s) triggering the Department's request for an Action Plan, or, if the root cause has not yet been determined, the actions the Contractor will take to determine the root cause(s); (ii) if a remedy is possible, the specific actions the Contractor commits to take to remedy the failure(s) or incident(s) and prevent them from recurring in the future; and (iii) the timeline for completing each task described in the Action Plan.
- (c) After receiving the Contractor's proposed Action Plan, the Department may give the Contractor notice that the Department approves the Action Plan as written, it may reject the Action Plan outright as materially deficient or unsatisfactory, or it may identify specific aspects of the Action Plan to be revised by the Contractor. If so requested by the Department, the Contractor will meet with the Department's

designated representatives to discuss the proposed Action Plan. If the Department requests a revised Action Plan, the Contractor will prepare and submit a revised Action Plan within three (3) Business Days for the Department's approval. If the Department approves the Contractor's Action Plan, the Contractor will carry out the steps described in the Action Plan in accordance with the associated timeline.

- (d) If the Contractor fails to comply in a timely manner with the Contractor's obligations regarding the creation or implementation of an Action Plan, the Department may step in and take over the creation and/or implementation of the Action Plan or the rectification of the failure(s) or incident(s) triggering the Department's request for an Action Plan, either by itself or with the assistance of one or more third-party contractors.
- (e) If the Department exercises its step-in rights, the Contractor must cooperate fully with the Department (including its Staff and any third parties acting on behalf of the Department) and shall provide, at no additional charge to the Department, all assistance reasonably required by the Department as soon as possible, including:
 - (i) Providing access to all relevant equipment, premises and software under the Contractor's control as required by the Department (or its nominee); and
 - (ii) Ensuring that the Contractor Staff, normally engaged in the provision of the work, are available to the Department to provide assistance that the Department may reasonably request.
- (f) The Department's step-in rights will end, and the Department will hand back the responsibility to the Contractor, when (and if) the Contractor demonstrates to the Department's reasonable satisfaction that the Contractor is capable of resuming performance and fulfillment of the affected Contractor responsibilities in accordance with the requirements of the Contract and that the circumstances giving rise to the step-in right cease to exist and will not recur.
- (g) The Contractor must reimburse the Department for all reasonable costs incurred by the Department (including reasonable payments made to third parties) in connection with the Department's exercise of step-in rights (Step-In Costs). If the Contractor fails to reimburse the Department within thirty (30) days of receipt of the Department's demand for payment of Step-In Costs, the Department is entitled to set off such Step-In Costs against a subsequent invoice.

20. TERMINATION, DEFAULT, AND REMEDIES

20.1 Right of Termination

The Department has the right to terminate the Contract for cause, for convenience, or for the State's non-appropriation or non-release of funds. A written notice will be provided to the

Contractor (Termination Notice) prior to termination in accordance with the following termination provisions.

20.1.1 Termination for Cause

(a) The Department has the right to terminate the Contract by written notice of terminate for cause and without further liability or penalty to the State for any of the following reasons (each of which shall constitute an Event of Default):

- (i) The Contractor fails to pay any and all entities, individuals, and the like furnishing labor or materials in connection with the Contract or as otherwise required herein in;
- (ii) The Contractor fails to provide the Deliverables and Services as required under the Contract;
- (iii) The Contractor commits any material breach of this Contract;
- (iv) The Contractor discontinues the performance of the work required under the Contract, or fails to resume work that has been discontinued within a reasonable time after receiving notice to resume the work, or abandons the work;
- (v) The Contractor employs any unauthorized aliens as defined in Section 23.25, in the performance of the work;
- (vi) The Contractor is debarred, suspended, or removed as an authorized vendor by any State or federal agency;
- (vii) The Contractor fails to abide by any statutory, regulatory, or licensing requirement;
- (viii) The Contractor fails to correct within a commercially reasonable time any work that the Department has rejected as unacceptable or unsuitable;
- (ix) One or more of the following circumstances, unless within the Cure Period the Contractor (including its receiver or trustee in bankruptcy) provides to the Department adequate assurances, reasonably acceptable to the Department, of its continuing ability and willingness to fulfill the Contractor's obligations under the Contract:
 - (1) Entry of an order for relief under Chapter 11 of the United States Bankruptcy Code;
 - (2) The making by the Contractor of a general assignment for the benefit of creditors;

- (3) The appointment of a general receiver or trustee in bankruptcy of the Contractor's business or property;
- (4) An action by the Contractor under any state insolvency or similar Applicable Law for the purpose of its bankruptcy, reorganization, or liquidation.
- (x) If the Contractor loses or is denied authority to carry on a trade or business in Florida;
- (xi) The Contractor makes or has made an intentional material misrepresentation or omission in any materials provided to the Department;
- (xii) The Contractor fails to provide and maintain the required insurance;
- (xiii) The Contractor fails to maintain the Performance Bond;
- (xiv) The Contractor fails to promptly pay any and all taxes or assessments imposed by and legally due to the Department or State;
- (xv) The Contractor refuses to allow Department access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, F.S., made or received by Contractor in performance of the Contract and not otherwise deemed confidential, proprietary or a trade secret;
- (xvi) The Contractor refuses to allow auditor access as required by the Contract;
- (xvii) The Contractor permits State Data to be transmitted, viewed or accessed outside the United States except where not expressly permitted to do so by this Department;
- (xviii) The Contractor engages or changes Subcontractor(s) in violation of this Contract;
- (xix) The Contractor fails to timely notify the Department upon discovery of problems or issues affecting or that are likely to affect the Solution or the Project in a material adverse manner;
- (xx) The Contractor fails to comply with requirements of Section 13, Data Security and Confidentiality;
- (xxi) The Contractor fails to timely report and pay the transaction fee contained in Section 287.057(22)(c), F.S.;
- (xxii) The Contractor has submitted a false certification as provided under Contract Section 23.22, Scrutinized Company List;

- (xxiii) The Contractor is assessed financial consequences for at least three consecutive months;
 - (xxiv) The Contractor is assessed financial consequences for a total of five or more months out of twelve months; and/or
 - (xxv) If the Department discovers that any material information provided by the Contractor in connection with the procurement or performance of this Contract is false.
- (b) The Department may also terminate for case for any other reason identified elsewhere in the Contract as an Event of Default, if the Event of Default is incapable of being cured, or, in the case of an Event of Default that is capable of being cured, if it has not been cured within thirty (30) Business Days after the Contractor's receipt of written notice from the Department declaring an Event of Default and requesting that it be cured (the "Cure Period"). The Cure Period is inclusive of the days incorporated into Section 19.3.
- (c) Should the Contractor fail to perform all Services under the Contract, the Contractor shall be liable to the Department for any fees, costs or expenses that the Department may incur in securing and paying a substitute provider to complete performance of the affected Services.

20.1.2 Termination for State's Non-Appropriation or Non-Release of Funds

- (a) The State's obligations to perform and pay under this Contract are contingent upon an annual appropriation and subsequent release(s) by the Legislature, and subject to the provisions of the Proviso requirements or Legislative appropriations. If appropriations are required, the Department shall affirmatively take all reasonable steps to seek such appropriations but does not guarantee that it will be successful in securing an annual appropriation and subsequent releases(s) by the Legislature. The Parties acknowledge and agree that they have no intent to violate Section 216.311, F.S., by the execution of this Contract, and that any provision of this Contract that would violate such statutory provision is null and void and shall be deemed stricken from this Contract, and that, to the extent possible, the remainder of the Contract shall remain in full force and effect.
- (b) The Department may, at its sole option, terminate this Contract by providing twenty (20) Business Days' written notice of termination to the Contractor if the Department fails to receive sufficient funds to perform its obligations under this Contract. If funding for the Project is reduced by law, or funds to pay the Contractor for the agreed-to level of the Services to be provided by the Contractor are not appropriated or otherwise made available, the Department may, upon twenty (20) Business Days' written notice to the Contractor, reduce the level of the Services in such manner and for such periods of time as the Department may elect. In the event the Department

terminates or reduces Services for this Contract for lack of access to funding, the Contractor shall be entitled to receive compensation equitably adjusted to reflect those Services that are terminated or reduced on a percentage of completion basis, including materials and labor, based on the hourly rates for hours documented at the applicable rate in Attachment 2 – Payment Schedule, but which may not exceed the Firm Fixed Price when combined with all amounts paid to the date of termination/reduction to the extent funds are available. The Contract shall terminate on the last day of the fiscal year in which the funds were appropriated, subject to the terms in this Contract. The effective date of the termination may be extended to allow for Transition Services under Attachment 1 – Statement of Work, if adequate funds are appropriated to cover the fees and costs.

- (c) The Parties further agree that the foregoing does not in any way limit, abrogate, or otherwise modify the Contractor’s rights or remedies under applicable law, including the Contractor’s right to seek a claims bill.

20.1.3 Termination for Convenience

The Department may terminate this Contract for its convenience (i.e., for any reason or no reason), in whole or in part, if the Department determines that such a termination is in the State’s best interest. Reasons for such termination shall be left to the sole discretion of the Department. The Department shall have the right to so terminate the Contract, by providing the Contractor forty (40) Business Days written notice of termination. The Contractor shall perform the services in accordance with the notice of termination. The Contractor’s sole and exclusive remedy in respect of such termination is recovery of the Contract price for all work completed and Accepted through the effective date of termination and on a percent complete basis for all work-in-progress. The Contractor shall submit a request for payment of completed Services to the Department within twenty (20) Business Days after the conclusion of all termination services. Requests submitted later than forty (40) Business Days after termination will not be honored and will be returned unpaid.

20.2 Certain Rights and Obligations upon Termination

- (a) If this Contract is terminated by the Department for any reason, the Contractor shall:
 - (i) stop all work as specified in the Department’s termination notice,
 - (ii) take any action that may be necessary, or that the Department may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in the Contractor's possession or control,
 - (iii) return all materials and property provided directly or indirectly to the Contractor by any entity, agent or employee of the Department, and

- (iv) transfer title in, and deliver to, the Department, unless otherwise directed, all Deliverables and any software licenses resulting from the Contract.
- (b) Regardless of the basis for the termination, the Department is not obligated to pay, or otherwise compensate, the Contractor for any lost expected future profits, costs, or expenses incurred with respect to Services not actually performed for the State.
- (c) If any such termination by the Department is for cause, the Department shall have the right to set-off against any amounts due the Contractor the amount of any damages for which the Contractor is liable to the State under this Contract or pursuant to Applicable Law or equity.
- (d) In the event the Department issues a termination notice because of Contractor's Default, the Contractor shall satisfy all undisputed obligations to its Subcontractors providing services and all other third parties and so certify to the Department in writing as a condition precedent to the Department's obligation to pay the Contractor any remaining amounts due for Services rendered.
- (e) The Department shall have the right to assume, at its option, any and all subcontracts and agreements for services and materials provided under this Contract and may further pursue completion of the Services under this Contract by replacement contract or otherwise as the Department may decide in its sole judgment.
- (f) The Department may, upon termination or expiration of the Contract, purchase any assets used by the Contractor in performance of the Contract, at their depreciated value, or if not depreciated, then Department retains the right to negotiate to purchase such assets at an agreed-upon cost, not to exceed the price offered in any state term contract.
- (g) Any termination of this Contract by a Party shall be with full reservation of, and without prejudice to, any rights or remedies otherwise available to such Party with respect to any claims arising prior to or as a result of such termination. The rights and remedies provided and available to the Department and the Contractor in this Contract are distinct, separate and cumulative remedies, and no one of them, whether or not exercised by a Party, shall be deemed to be in exclusion of any other. The election of one remedy shall not be construed as a waiver of any other rights and remedies either Party may have under this Contract, at law, or in equity.
- (h) Without limiting the generality of the preceding paragraph, if the Contractor fails to cure an Event of Default within the time provided, the Department shall have the right to re-procure any goods and/or services that were to have been provided by the Contractor but were not so provided. If this Contract is terminated by the Department for cause, in addition to any other remedies available to the Department, the Contractor is responsible for all costs incurred by the Department in terminating this Contract, and any additional costs the Department and other Eligible Entities may

incur to procure and receive the Services required by this Contract from other sources. Notwithstanding anything to the contrary in this Contract, any such re-procurement costs and costs of substitute performance shall not be considered to be consequential, indirect or incidental damages, and shall not be excluded from recovery by the Department or the State. No liability shall accrue against the Department for non-appropriation or absence of legally available funds.

21. DISPUTE RESOLUTION

21.1 Overview

- (a) Any conflict or dispute between the Department and the Contractor arising out of or relating to the Contract or their relationship under it will be resolved in accordance with the procedures specified in this Section 21, which will be the sole and exclusive procedures for the resolution of any such disputes prior to litigation. If the Contractor wishes to invoke the dispute resolution process, the Contractor may do so by submitting to the Department a written certification invoking the dispute resolution process, together with a claim form for dispute executed by the Contractor's Authorized Representative certifying that:
 - (i) The claim is made in good faith, and
 - (ii) The supporting data provided with the Contractor's claim form are current and complete to the Contractor's best knowledge and belief.
- (b) The Department may invoke the dispute resolution process by providing the Contractor a claim form with the supporting data.

21.2 Informal Negotiations

- (a) Prior to initiating litigation (except for the purpose of seeking a temporary restraining order or other equitable remedies), the Parties will make a good faith effort to resolve their dispute through informal negotiations as provided in the Project's issue management process defined in the PMP utilizing this Section 21.2 until the PMP is approved.
- (b) Whenever the Department and Contractor have a dispute relative to the Contract, their respective Project managers will immediately attempt to resolve the dispute.
- (c) If the Parties are unable to resolve any dispute, the Contractor's authorized representative shall meet with the Department's authorized representative for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:
 - (i) The Contractor and the Department shall meet as often as they reasonably deem necessary in order to gather and furnish to each other all information

with respect to the matter in issue which they believe to be appropriate and germane in connection with its resolution. They will meet to discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

- (ii) During the course of negotiations, all reasonable requests made by one Party to another for non-privileged information reasonably related to this Contract will be honored in order that each of the Parties may be fully advised of the other's position.
- (iii) The specific format for the discussions will be left to the discretion of the Department and the Contractor authorized representatives but may include the preparation agreed upon statements of fact or written statements of position.
- (iv) Following the completion of this process, the Department shall issue a written opinion regarding the issue(s) in dispute. The written opinion regarding the dispute shall be considered the Department's final action prior to formal proceedings.
- (v) These informal procedures will not be construed to prevent a Party from instituting formal proceedings to avoid the expiration of any applicable limitations period.

21.3 Mediation

- (a) If the Department and Contractor are not able to resolve a dispute by an informal negotiation, either Party may initiate a mediation proceeding by a request in writing to the other Party within five (5) Business Days after delivery of the notice declaring the informal negotiation process terminated. The mediation is a condition precedent to either Party filing any formal legal action. The Parties regard the obligation to mediate as an essential provision and one that is legally binding on each. Either Party may bring an action to enforce this obligation in the State circuit court of Leon County, Florida.
- (b) All mediation proceedings will be conducted in accordance with the Contract, the Florida Rules for Certified and Court-Appointed Mediators, and applicable Florida Statutes.
- (c) If the Department and the Contractor do not agree within ten (10) Business Days after the request for mediation on the selection of a neutral mediator willing to serve, then the Department will unilaterally select the mediator, who must be a Florida certified mediator. Both Parties will promptly cooperate with the appointed mediator to effectuate mediation.

- (d) Unless otherwise agreed in writing by the Department and the Contractor, mediation sessions will occur in Tallahassee, Florida.
- (e) Mediation of disputes will be conducted over a period of twenty-five (25) Business Days following the appointment of a mediator. If the dispute cannot be resolved by the mediation deadline, or by the end of any mutually agreed continuation thereof, the Department, the Contractor or the mediator may give written notice declaring the mediation process terminated.
- (f) The Parties will equally share the cost of the mediator.

21.4 Performance to Continue

Each Party agrees to continue performing its obligations under this Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (for the avoidance of doubt, a dispute over payment shall not be deemed to preclude the Contractor's continued performance) and without limiting the Department's right to terminate this Contract.

21.5 Payment of Fees and Costs

Except as otherwise provided by Applicable Law or by the indemnity clauses contained herein, the Department and Contractor will each bear its own costs and legal expenses incurred in connection with any negotiations, mediation, administrative proceeding, or litigation pursuant to this Contract.

21.6 Right to Equitable Relief

In lieu of terminating the Contract upon the occurrence of an Event of Default, the Department may institute legal proceedings to compel performance of any obligation required to be performed by the Contractor hereunder, including, where appropriate, actions for specific performance and injunctive relief. The Contractor agrees that it does not have any right to equitable relief against the Department (or other Eligible Entity) and will not attempt to institute any such proceeding for equitable relief.

21.7 Liability

- (a) Notwithstanding anything in this Contract or otherwise to the contrary, except as otherwise provided in this section, (i) neither the Department nor Contractor shall be liable to the other or to any third party for any lost profits or any loss of business; or any consequential or special losses or damages of any kind; and (ii) the sole and exclusive remedy of Contractor and of the Department for any claim, loss or damages in any way related to, or arising out of, this Contract or any Services provided or anticipated to be provided shall be limited to such Party's actual, direct damages.

- (b) The foregoing limitations of liability shall not apply with respect to the Contractor's defense and indemnification obligations under this Contract, or to exclude or limit the recovery of any damages attributable to any of the following:
- (i) intentional torts, willful misconduct (including intentional breach of contract), unlawful conduct, or gross negligence of or by a Party or an entity or person for whom a Party is responsible;
 - (ii) a breach of a Party's material obligations under Section 12, Public Records and Confidentiality or Section 13, Data Security and Confidentiality;
 - (iii) a Party's intentional misappropriation or intentional infringement of the other Party's Intellectual Property Rights;
 - (iv) a Party's violation of Applicable Law; or
 - (v) the Contractor's (or a Subcontractor's) cessation or abandonment of any Services without providing Transition Services in good faith and substantially in accordance with this Contract. Notwithstanding any provisions to the contrary, nothing in this section will be construed to impose any limitation prohibited by Rule 60A-1.006(3), F.A.C.
- (c) The following types of damages will be deemed to be recoverable by the Department as direct damages under this Contract to the extent they result from the failure of the Contractor (or entities or persons for whom is responsible) to fulfill its obligations under and in accordance with this Contract:
- (i) Step-In Costs;
 - (ii) Costs and expenses incurred by the Department and/or other Eligible Entities (including documented internal costs as well as amounts paid to third parties) to correct errors or deficiencies in the Services, provide a workaround for the Services, and/or acquire substitute services conforming to the Contract as a result of any failure of the Contractor to provide the Services as required by the Contract;
 - (iii) Costs and expenses incurred by the Department and/or other Eligible Entities (including documented internal costs as well as amounts paid to third parties) to correct, recreate, and/or reload any State Data lost or damaged as a result of the Contractor's breach of the Contract or as a result of negligence or willful misconduct by any Contractor Staff;
 - (iv) The costs of identity protection services, including notification letters, credit monitoring services, identity theft insurance, reimbursement for credit freezes, fraud resolution services, identity restoration services, toll free

information services for affected individuals and any similar service that corporate entities who maintain or store Personal Information or PII make available to individuals who are affected by the unauthorized use or disclosure of their Personal Information or PII as a result of the Contractor's breach of the Contract or as a result of negligence or willful misconduct by any Contractor Staff; and

- (v) Damages suffered by any other Eligible Entity that would be direct damages if they had instead been suffered by the Department itself.

22. TRANSITION

- a) Circumstances will arise during or at the end of the Contract's term in which ongoing responsibility for Services or functions previously performed (or to be performed) by the Contractor or its Subcontractor(s) will be assumed by the Department or designee, whether in connection with the Contractor's completion of certain Services or in the event of the Contract's expiration or early termination. The Contractor acknowledges that, in all such circumstances, a smooth transfer of affected functions to the Department or designee is vital to the State's continued business operations and that such transfers must proceed with minimal disruption and adverse effect. At any time during the Contract's term or in contemplation of its upcoming expiration or termination, in whole or in part, and regardless of the basis for its termination, if so requested by the Department, the Contractor will provide (or cause to be provided) the Transition Services in accordance with Attachment 1 – Statement of Work, in addition to continuing to perform Services that have not been completed or terminated.
- b) In order to afford the Department a sufficient opportunity to complete the necessary transition, the Department will have the right to extend the Contract's term and the period of any associated services beyond its otherwise applicable termination or expiration date, for a period of up to six (6) months. The Department will exercise this option by giving the Contractor written notice to that effect and will use reasonable efforts to provide such notice at least twenty (20) Business Days before the impending expiration or termination date.

23. FEDERAL AND STATE CONTRACTUAL REQUIREMENTS

23.1 General Provisions

23.1.1 Advertising, Media Releases, Endorsements and References

- (a) Except for disclosures and notices made pursuant to Applicable Law, the Contractor shall submit to the Department all press releases and other forms of publicity relating to the Project or this Contract, or mentioning or implying the names of any member of the Project Team, and further agrees not to publish or use press releases or other

forms of publicity concerning the Project or this Contract without obtaining the Department's prior written consent, which will not be unreasonably withheld or delayed. This provision shall not apply to the Contractor's marketing materials that merely list the Department as a client or to the re-publication of any material that already has been placed in the public domain. All communications with the news media pertaining to the subject of the Project or this Contract shall be referred to the Department's Contract Manager.

- (b) The Contractor agrees to permanently refrain from using or mentioning its association with the Department in advertisements, letterhead, business cards, etc. The Contractor's services to the Department may be generally stated and described in the Contractor's professional resume. The Contractor may not give the impression in any event or manner, that the Department recommends or endorses the Contractor. The Contractor may not use the Department as a reference without prior approval of the Department.

23.2 Americans with Disabilities Act Requirements

The Contractor assumes the sole responsibility for compliance with all laws, rules and regulations stated in the Americans with Disabilities Act as applicable to Contractor's employees and Services. By execution of this Contract, the Contractor affirms that it is not, to the best of its knowledge, in violation of this law at the time of execution. The Parties agree that failure to comply with this section may constitute a material breach and may be grounds for termination of this Contract in accordance with Section 20, Termination, Default and Remedies at the Department's reasonable discretion.

23.3 Assignment

- (a) Neither Party shall have the right to assign this Contract, or to assign or delegate any of its duties or obligations under this Contract, to any other Party (whether by operation of Applicable Law or otherwise), without the prior written consent of the other party which consent shall not be unreasonably withheld; provided, however, that the Department may assign this Contract without the prior consent of the Contractor to any other State agency, department, or division provided that all Department rights and obligations are so assigned. Any purported assignment in violation of this section shall be null and void.
- (b) The Contractor may not assign this Contract without the prior written approval of the Department. The Contractor may not assign the rights to receive payments due under this Contract without the prior written approval of the Department, and any such approved assignment shall be only to the extent allowed by Applicable Law, and any purported assignment in violation of this paragraph shall be null and void.
- (c) All terms and provisions of this Contract shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns.

23.4 Compliance with Laws

- (a) The Contractor agrees to comply with all applicable federal and state laws and regulations, including but not limited to:

Title 42 Code of Federal Regulations (CFR) Chapter IV, Subchapter C; Title 45 CFR, Part 74, General Grants Administration Requirements; Chapter 409, Florida Statutes; all applicable standards, orders or regulations issued pursuant to Clean Air Act of 1970 as amended (42 USC 1857, et seq.); Title IV of the Civil Rights Act of 1964 (42 USC 2000d) in regard to persons served; 42 CFR 431, Subpart F; Section 504 of the Rehabilitation Act of 1973, as amended; 29 USC 794, which prohibits discrimination on the basis of handicap in programs and activities receiving or benefiting from federal financial assistance; the Age Discrimination Act of 1975, as amended; 42 USC 6101 et seq., which prohibits discrimination on the basis of age in programs or activities receiving or benefiting from federal financial assistance; the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, which prohibits discrimination on the basis of sex and religion in programs and activities receiving or benefiting from federal financial assistance; the Medicare-Medicaid Fraud and Abuse Act of 1978; other federal omnibus budget reconciliation acts; Americans with Disabilities Act (42 USC 12101, et seq.); and the Balanced Budget Act of 1997. The resulting Contract may be subject to changes in federal and state law, rules or regulations.

- (b) The Contractor shall comply with any other conditions for compliance with existing statutory and regulatory requirements, issued through formal guidance procedures, determined by the Secretary of HHS to be necessary to update and ensure proper implementation of those existing requirements.
- (c) The Contractor shall comply with all Applicable Laws in providing the Services and performing its other duties and obligations under the Contract. The Contractor may be required to demonstrate compliance with Applicable Laws at the written request of the Department's Contract Manager.
- (d) E-Verify Employment Verification
- (i) The Chief Financial Officer has directed, in cooperation with the Governor's Executive Order 11-116, that the Contractor must participate in the federal E-Verify Program for Employment Verification under the terms provided in the "Memorandum of Understanding" with the federal Department of Homeland Security governing the program if any new employees are hired to work on this Contract (or if the Contractor's Subcontractors hire new employees to work on this Contract) during the term of the Contract. The Contractor agrees to provide to the Department, within thirty (30) days of hiring new employees to work on this Contract, documentation of such enrollment in the form of a copy of the E-Verify "Edit Company Profile" screen, which contains proof of

enrollment in the E-Verify Program. Information on “E-Verify” is available at the following website: <http://www.dhs.gov/e-verify>

- (ii) The Contractor further agrees that it will require each Subcontractor that performs work under this Contract to enroll and participate in the E-Verify Program if the Subcontractor hires new employees during the term of this Contract. The Contractor shall include this provision in any subcontract and obtain from the Subcontractor(s) a copy of the “Edit Company Profile” screen indicating enrollment in the E-Verify Program and make such record(s) available to the Department upon request.
- (iii) Compliance with the terms of this Employment Eligibility Verification provision will be an express condition of the Contract, and the Department may treat a failure to comply as a material breach of the Contract.
- (iv) In the event legislation authorizes an alternative option as proof of legal status, the Contractor may use the process authorized by such legislation upon its passage.
- (e) State Data will be processed and stored in data centers that are located only in the U.S.
- (f) All Contractor Staff or Subcontractor Staff will undergo level two (2) background checks, including fingerprinting, at the Contractors expense before any Project work involving access to State Data is performed. The Contractor must advise all Contractor Staff or Subcontractor Staff that background screening is required. The Department will provide detailed instructions for fingerprinting upon selection.
- (g) By entering into this Contract, the Contractor certifies that it is, and during the term will ensure it remains, in compliance with U.S. export control laws.
- (h) The Contractor and its Subcontractors are required, pursuant to Section 287.0571(5)(f), F.S., to maintain adequate accounting records that comply with all applicable federal and state laws and generally accepted accounting principles.
- (i) The Contractor is required, pursuant to Section 287.0571(5)(h), F.S., to interview and consider for employment with the contractor each displaced state employee who is interested in such employment.

23.5 Conflict of Interest

The Contractor must have no conflict of interest as described in Chapter 112, F.S. including but not limited to Section 112.313(3), F.S. During the term of the Contract, the Contractor shall not knowingly employ, subcontract with, or sub-grant to any person that has material interest as defined by Section 112.312(15), F.S. This shall be an ongoing requirement, and failure to comply may subject the Contractor to cancellation and/or reimbursement of all dollars paid under the Contract.

23.6 Consents and Approvals

Except as expressly provided otherwise in this Contract, if either Party requires the consent or approval of the other party for the taking of any action under this Contract, such consent or approval shall be in writing and shall not be unreasonably withheld or delayed.

23.7 Contract Document, Execution in Counterparts and Authority to Sign

Captions and headings used in this Contract are for information and organization purposes only. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of this Contract. This Contract may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute the same document.

23.8 Disclosure of Litigation; Contractor Assurances

23.8.1 Disclosure

- (a) The Contractor shall provide full disclosure and promptly notify the Department of (1) a change of control in Contractor ownership; (2) any criminal litigation, proceedings or Securities Exchange Commission, public agencies, and law enforcement investigations involving the Contractor, or any of the foregoing entity's then-current officers or directors; or (3) any civil litigation, arbitration or proceeding to which the Contractor is a party, and which involves:
 - (i) Software systems development or systems integration projects and which either relates to an amount in excess of \$1,000,000 or might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor hereunder; or
 - (ii) A claim or written allegation of fraud against the Contractor or, to the extent the Contractor is aware, any Subcontractor hereunder, by a governmental or public entity arising out of their business dealings with governmental or public entities.
- (b) All notices under this section must be provided to the Department within thirty (30) Business Days following the date on which the Contractor first becomes aware of any such litigation, investigation, arbitration or other proceeding (collectively, a "Proceeding"). Details of settlements, which are prevented from disclosure by the terms of the settlement, may be annotated as such.

23.8.2 Assurances

- (a) In the event that any proceeding disclosed to the Department pursuant to this section, or of which the Department otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:

- (i) The ability of the Contractor (or a Subcontractor) to continue to perform this Contract in accordance with its terms and conditions, or
- (ii) Whether the Contractor (or a Subcontractor), in performing Services for the State, is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Florida law, regulations or public policy,

then the Contractor shall be required to provide the Department all reasonable assurances requested by the Department to demonstrate that the Contractor and/or its Subcontractors hereunder will be able to continue to perform this Contract in accordance with its terms and conditions. Failure by the Contractor to comply with the terms of this Disclosure subsection shall constitute a material breach of the Contract and shall be grounds for termination of this Contract in accordance with Section 20, Termination, Default and Remedies, at the Department's reasonable discretion.

- (b) All notices under this section must be provided to the Department within thirty (30) Business Days following the date on which the Contractor first becomes aware of any such litigation, investigation, arbitration or other proceeding (collectively, a "Proceeding"). Details of settlements, which are prevented from disclosure by the terms of the settlement, may be annotated as such.
- (c) The Contractor represents that there is no action, suit, proceeding, inquiry or investigation at law or equity, before or by a court, governmental agency, public board or body, pending or threatened, to the best of the Contractor's knowledge, that would materially prohibit, restrain or enjoin the execution or delivery of the Contractor's obligations, diminish the Contractor's obligations, or diminish the Contractor's financial ability to perform the terms of this Contract. During the term of this Contract, if any of the aforementioned events occur, the Contractor shall immediately notify the Department in writing. The Contractor shall remain adequately capitalized during the term of this Contract. The Parties agree that failure to comply with this section shall constitute a material breach and shall be grounds for termination of this Contract in accordance with Section 20.

23.8.3 Benchmark Report / Competitive Price Assurance

- (a) Upon request, to ensure the State continues to receive competitive market pricing, the Contractor(s) shall report to the Department benchmark data.
- (b) The benchmark data will compare the State's rates against rates contractually provided to other states and enterprises by the Contractor, with attention given to a similar mix of products and services associated with other such contracts.

- (c) The benchmark will emphasize those rates negotiated within the most recent twelve (12) months.
- (d) The benchmark will be made for those services that represent the State's most significant purchase volumes.
- (e) The benchmark will compare the State's rates against the best rates found in the industry (i.e., the top 10%) within the United States.
- (f) Should it be found that the State's pricing is higher than the market benchmark, the Contractor shall unilaterally reduce the State's pricing, charges and/or discounts, as appropriate, to make the State's rates comparable to the benchmarked best rates. Any adjustments shall be made available to the customers within twenty (20) Business Days of notification of findings.

23.9 Diversity

It is the policy of the State that Minority Business Enterprises, Woman-Owned Business Enterprises and Service-Disabled Veteran Business Enterprises (as those terms are defined by Florida Statutes), have the maximum practicable opportunity to participate in performing contracts let by any State agency. The Contractor hereby agrees to emulate this policy to the fullest extent possible, consistent with ensuring its efficient Contract performance, by reasonably considering such Business Enterprises as Subcontractors for the Services. The Contractor further agrees to comply with all controlling Applicable Law respecting the participation of such Business Enterprises in the provision of the Services and to reasonably cooperate in any studies or surveys as may be conducted by the State to determine the extent of the Contractor's compliance with this section.

23.10 Drug Free Workplace Program

The Contractor agrees to implement a drug free workplace program as defined in Section 287.087, F.S., throughout the term of this Contract. The Parties agree that the Contractor's failure to comply with this section shall constitute a material breach of the Contract and shall be grounds for termination of this Contract in accordance with Section 20, Termination, Default and Remedies, at the Department's reasonable discretion.

23.11 Entire Contract

This Contract and any amendments thereto, constitute the full and complete Contract of the Parties hereto and supersedes any prior contracts, arrangements and communications, whether oral or written, with respect to the subject matter hereof. Each Party acknowledges that it is entering into the Contract solely on the basis of the representations contained herein, and for its own purposes and not for the benefit of any third party. This Contract will not apply to any events or transactions occurring prior to the Contract Effective Date.

23.12 Further Assurances

The Parties will, subsequent to the Contract Effective Date, and without any additional consideration, execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Contract.

23.13 Good Standing

The Contractor must maintain good standing as a Florida or Foreign profit or non-profit corporation, partnership, limited liability company, or other recognized business entity authorized to transact business pursuant to the laws of this State. The Contractor shall certify, concurrent with the execution of this Contract, that the person executing this Contract is authorized to do so on the Contractor's behalf.

23.14 Lobbying

In accordance with Section 216.347, F.S., and as provided herein, the Contractor shall not expend any State funds for the purpose of lobbying the legislature, the judicial branch, or a State agency.

23.15 Non-discrimination and Equal Opportunity

The Contractor agrees to not discriminate on the basis of race, religion, sex, creed, national origin, disability, age, marital status, or veteran's status in its employment practices. The Contractor agrees to comply with the laws of the State and of the United States of America, regarding such non-discrimination and equality of opportunity, which are applicable to the Contractor. Furthermore, in accordance with Section 287.134, F.S., an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity and may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity. By reference, the Contractor and its Subcontractors submit that to the best of their knowledge they are not in violation of any laws referenced in this section as of Contract Effective Date. The Parties agree that the Contractor's failure to comply with this section may constitute a material breach and may be grounds for termination of this Contract in accordance with Section 20, Termination, Default and Remedies, at the Department's reasonable discretion.

23.16 Representation of Ability to Perform

The Contractor represents that there is no action, suit, proceeding, inquiry or investigation at law or equity, before or by a court, governmental agency, public board or body, pending or threatened, to the best of the Contractor's knowledge, that would materially prohibit, restrain or enjoin the execution or delivery of the Contractor's obligations, diminish the Contractor's obligations, or diminish the Contractor's financial ability to perform the terms of this Contract. During the term of this Contract, if any of the aforementioned events occur, the Contractor shall immediately notify the Department in writing. The Contractor shall remain

adequately capitalized during the term of this Contract. The Parties agree that the Contractor's failure to comply with this section shall constitute a material breach and shall be grounds for termination of this Contract in accordance with Section 20, Termination, Default and Remedies at the Department's reasonable discretion.

23.17 Governing Law and Jurisdiction

This Contract and the relationship of the Parties under it shall in all respects be governed by, and construed in accordance with, the laws of the State without regard to any Florida choice of law rules that would apply the substantive law of any other jurisdiction. The Contractor irrevocably consents with respect to any actions or proceedings arising out of or in connection with this Contract, venue in Leon County, Florida, in whichever court jurisdiction may be proper. The Contractor agrees to appoint agents in the State to receive service of process. Each Party waives any right to a jury trial in any proceeding arising out of or related to this Contract.

23.18 Nonexclusive Contract

This procurement will not result in an exclusive right or license to the Contractor to provide the Services described herein. The Department may, without limitation and without recourse by the Contractor, contract with other vendors to provide the same or similar services.

23.19 No Waiver of Default

Unless otherwise agreed, the delay or failure by either Party to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of that Party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

23.20 Reformation and Severability

If any term or provision of this Contract is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of the Contract, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the Parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent of the Parties as reflected herein.

23.21 Independent Contractor

In connection with this Contract, each Party is considered an independent entity and as such shall not have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership or agency relationship between the Parties for any purpose. Under no circumstance shall one Party's employees be construed to be employees of the other Party, nor shall one Party's employees be entitled to participate in the

profit sharing, pension or other plans established for the benefit of the other Party's employees. Neither Party shall be deemed a joint employer of the other's employees; each Party being responsible for any and all claims by its employees. Neither Party's employees shall be deemed "leased" employees of the other Party for any purpose. The agreements of the Parties set forth in this Contract are not intended for, nor shall they be for the benefit of or be enforceable by, any third parties.

23.22 Scrutinized Company List

In executing this Contract, Contractor certifies that it is not: 1) on the Scrutinized Companies with Activities in Sudan List, 2) on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or 3) participating in a boycott of Israel. The Contract may be terminated if the Contractor submits a false certification regarding such matters or is placed on either list. In addition, the Contract may be terminated if the Contractor is on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel (see Section 287.135, F.S.).

23.23 Statutory Violations

An entity or affiliate who has been placed on the public entity crimes list or the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity pursuant to limitations under Chapter 287, F.S.

23.24 Survival

Any provision of this Contract that imposes continuing obligations on the Parties including the Parties' respective warranty, indemnity and confidentiality obligations, shall survive the expiration or termination of this Contract for any reason. These include but are not limited to Section 11, Payments, Section 12, Public Records and Confidentiality, Section 13, Data Security and Confidentiality, Section 14, Ownership and Use Rights, Section 17, Indemnification, Section 20.2, Certain Rights and Obligations upon Termination, and Section 23.1.1, Advertising, Media Releases, Endorsements, and References.

23.25 Unauthorized Aliens

The Contractor acknowledges and affirms that the employment of unauthorized aliens by the Contractor may be considered a violation of Section 247A of the Immigration and Nationality Act (see 8 USC 1324a). By execution of this Contract, the Contractor affirms that it is not, to the best of its knowledge, in violation of this law at the time of execution. The Parties agree that the Contractor's failure to comply with this section may constitute a material breach and may be grounds for termination of this Contract in accordance with Section 20, Termination, Default and Remedies at Department's reasonable discretion.

24. ATTACHMENTS

24.1 Attachment 1 – Statement of Work

[Remainder of the page is intentionally omitted – to be included prior to signing the Contract.]

24.2 Attachment 2 - Payment Schedule

Attachment 2-A CONTRACT PAYMENT SCHEDULE

Attachment 2-B AMENDMENT LABOR RATES

[Remainder of the page is intentionally omitted – to be included prior to signing the Contract.]

24.3 Attachment 3 – Selected Portions of the ITN

[Remainder of the page is intentionally omitted – to be included prior to signing the Contract.]

24.4 Attachment 4 - Purchasing Form PUR 1000

[Remainder of the page is intentionally omitted – to be included prior to signing the Contract.]

24.5 Attachment 5 – Selected Portions of the Contractor's Reply

24.6 Attachment 6 - Definitions

24.7 Attachment 7 – Baseline Software License Agreement(s)

24.8 Attachment 8 – Deliverable Acceptance Criteria

24.9 Attachment 9 – Approved Subcontractors

24.10 Attachment 10 – Service Level Agreements

This Service Level Agreement sets forth the methodology that will be used to measure and assess the degree to which the Contractor’s performance of Services is meeting the Department’s implementation requirements for the Services under this Contract. The final Service Level Agreement will include service expectations prior to go-live and post-implementation support.

In lieu of liquidated damages or other damages described in this Contract, financial consequences will be assessed for nonperformance. Notwithstanding any provisions to the contrary, written acceptance of a particular deliverable does not foreclose the Department’s remedies in the event those performance standards that cannot be readily measured at the time of delivery are not met. Nothing in this section shall limit the Department’s right to pursue its remedies for other types of damages.

The parties acknowledge that the late Delivery of any Deliverable identified in Attachment 1 - Statement of Work, will interfere with the timely and proper completion of the Services, to the loss and damage of the Department, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the Department as a result of any such delay. Therefore, the Contractor and the Department agree that in the case of any such late delivery, the Department may assess liquidated damages or other financial consequence against the Contractor as specified in this section.

Service Level Expectations

Topic	Description of Expectation	Measurement Period	Financial Consequence
Quality of Deliverables	Contractor will provide quality Deliverables meeting the minimum acceptance criteria defined	By Deliverable	10% of the Deliverable amount for each occurrence the Contractor submits for acceptance a Deliverable not meeting the minimum acceptance criteria defined
Timeliness of Solution Deliverables	Contractor will submit Solution Deliverables for acceptance on or before the due date	By Deliverable	1% of the Solution Deliverable amount per Business Day for each occurrence the Contractor fails to timely submit a Solution Deliverable for acceptance
Timeliness of Project Deliverables	Contractor will submit Project Deliverables for acceptance on or before the due date	By Deliverable	0.5% of the Project Deliverable amount per Business Day for each occurrence the Contractor fails to timely submit a Project Deliverable for acceptance
Unauthorized Removal of Key Staff	Contractor will receive an Department authorization to remove any Key Staff	By Key Staff Member	\$50,000.00 per occurrence of unauthorized removal of a Key Staff member

Topic	Description of Expectation	Measurement Period	Financial Consequence
Failure to provide shadow period for replacement of Key Staff	Contractor will assign a replacement to shadow the incumbent Key Staff for at least twenty (20) Business Days	By Key Staff Member	\$2,500.00 per day (1/20 th of \$50,000.00) for each day of the 20 Business Day shadow period that the replacement does not shadow the incumbent Key Staff, up to a maximum of an additional \$50,000 per individual.
Quality of Staff	Contractor staffs Project with acceptable resources	By Staff Member	\$25,000.00 per occurrence of Department's request to remove Contractor Staff member
Disaster recovery of Project data	Contractor will conduct yearly disaster recovery test of Project data and provide disaster recovery test summary statement in accordance with the Project schedule	Yearly	2% holdback of payment from each invoice after the due date of the disaster recovery test summary statement is not received timely
Resolution of disaster recovery deficiencies	Contractor will resolve deficiencies identified during the disaster recovery testing to meet the minimum acceptance criteria within 20 Business Days after delivery of the disaster recovery test summary statement	Twenty (20) Business Days after delivery of the disaster recovery test summary statement	2% holdback of payment from each invoice beyond Twenty (20) Business Days until minimum acceptance criteria is met
Security review	Contractor will conduct formal security review of data and all environments to identify security vulnerabilities and provide security review report in accordance with the Project schedule	Quarterly	2% holdback of payment from each invoice after the due date of the security review report is not received timely
Resolution of security review deficiencies	Contractor will resolve deficiencies identified during the security review to meet the minimum acceptance criteria within twenty (20) Business Days after delivery of the security review report	Twenty (20) Business Days after delivery of the security review report	2% holdback of payment from each invoice beyond 20 Business Days until minimum acceptance criteria is met
Software Source Code Escrow	Contractor will make deposits into the software escrow corresponding to the complete then-current version of the implemented Solution in readable form within ten (10) Business Days of release of the solution or any subsequent update or new release or version	Ten (10) Business Days	\$1,000 per Business Day after the 10 th Business Day that Contractor does not make the deposit as required

Signatures

The Department and the Contractor have caused this Contract to be duly executed by their respective authorized representatives on the dates indicated below:

FOR THE CONTRACTOR:

[insert Contractor name]

By _____

Its _____

Dated: _____, 201_

FOR THE DEPARTMENT:

Florida Department of Elder Affairs

By _____

Its _____

Dated: _____, 201_