

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION
ATTACHMENT - A

Standard Contract

between

The Florida Office of Financial Regulation

and

Deferred Presentment Transaction System

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This Contract, between _____ (Contractor), and the State of Florida Office of Financial Regulation (Office or OFR) is effective as of the date last signed below (the “Effective Date”).

WHEREAS, the Office issued its Invitation to Negotiate (ITN) for the Florida Office of Financial Regulation Deferred Presentment Transaction System and published notice of the ITN in accordance with current directives; and

WHEREAS, the Contractor timely submitted its ITN Response and, if applicable, the best and final offer response (BAFO) agreeing to provide services as required by the Office, which support the Office’s information technology vision to deploy the best-in-class business processes to meet its objectives; and

WHEREAS, the Office has determined, after evaluating the Contractor’s Response, that it would be in the best interests of the State to award the contract to the Contractor and the Contractor desires to undertake such performance.

WHEREAS, pursuant to Chapter 560, Florida Statutes, the Office regulates money services businesses that offer financial services, such as check cashing, money transmittals, sales of monetary instruments, currency exchange, and deferred presentment transactions outside the traditional banking environment. As the agency responsible for oversight of the licensees operating under Chapter 560, the Office is afforded deference in its interpretation of rules or statutes over any alternative interpretations by the Contractor.

WHEREAS, Contractor shall implement a technology solution to provide the means to enforce the requirements and restrictions of deferred presentment transactions as outlined in Chapter 560, Florida Statutes. Contractor shall also provide operations and customer support service.

WHEREAS, the statements appearing in this Introduction are intended to provide the background and general introduction to this Contract and are not intended to expand the scope of the Parties' obligations under this Contract or to alter the plain meaning of the terms and conditions of this Contract. To the extent the terms and conditions of this Contract are unclear or otherwise ambiguous, such terms and conditions are to be interpreted and construed in light of such statements.

NOW, THEREFORE, in consideration of the foregoing covenants, the parties hereto agree as follows:

1 DEFINITIONS

1.1 Definitions

In this Contract, the following terms shall have the respective meanings stated in the solicitation section 1.4 and attached Exhibit 3, Glossary of Terms and Acronyms. Defined terms in the singular shall include the plural and vice versa, and the masculine, feminine, or neuter gender shall include all genders.

1.2 Other 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 Exhibits. Other capitalized terms used in this document shall have the meanings given in Exhibit 3, Glossary. Any other capitalized term used elsewhere in the Contract but not defined in Exhibit 3 shall have the meaning given it in the document or Contract Exhibit in which it is used.

2 CONTRACT

2.1 Entire Contract: Order of Precedence

This Contract, including any Exhibits referred to herein and attached hereto each of which is incorporated herein for all purposes, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. If there are conflicting provisions between the documents that make up the Contract, the order of precedence for the documents is as follows:

- a) The Contract document;
- b) The documents and materials attached to or incorporated by reference in the Contract including the approved final version of the Statement of Work;
- c) The DFS (OFR) ITN 14/15-07, as modified by any applicable Addendum to the ITN or request for Best and Final Offer;
- d) The Contractor’s suggestions in its Response or suggestions during negotiations regarding the use of current and emerging technologies and regarding policies and procedures as well as system features that are accepted by the Office in writing; and

- e) The documents and materials attached to or incorporated by reference in the Contractor's Response that are accepted by the Office in writing.

Notwithstanding the order listed above, purchase orders, change orders, and amendments issued after the Contract is executed may expressly change the provisions of the Contract. If they do so expressly, then the most recent of them will take precedence over anything else that is part of the Contract.

2.2 Contract Term

The term of this Contract will commence on the date the Contract is signed by both parties (Effective Date) and remain in effect for five (5) years. At the option of the Office the term may be renewed for up to three (3) one (1) year renewals. The renewal price for the contractual service is set forth in the Contract Price, Exhibit 2. No other costs for the renewal may be charged. Renewal is optional to the Office, based on factors including but not limited to satisfactory performance evaluations by the agency and subject to the availability of funds.

3 CONTRACT STRUCTURE AND ADMINISTRATION

3.1 Performance in General

The Office hereby engages the Contractor to perform the Services, and the Contractor undertakes to execute and complete the Project and Services in their entirety pursuant to the terms and conditions of this Contract and with the participation of State representatives as specified in this Contract.

3.2 Statement of Work, Deliverables and Delivery Schedule

The Services to be rendered by the Contractor pursuant to this Contract are defined and described in detail in the Statement of Work attached as Exhibit 1. The Statement of Work shall incorporate all of the Contractor's solution, more particularly described in the portions of the Contractor's Response that are incorporated into the final Statement of Work. All Exhibits attached to this Contract are incorporated in their entirety into, and form part of, this Contract. Any future amendments of the Contract will be defined in Contract Amendments with the Services to be described in the same format as the Statement of Work. The Contractor shall perform the Services in accordance with this Contract, including the Statement of Work executed under it. All modifications to this Contract must be in writing and signed by both parties. No oral modifications to this Contract are acceptable.

3.3 Procurement Office

This Contract is issued by the Office. This Contract includes obligations of the Contractor to provide services to the Office. The Office is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Services described herein. The Office is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.

3.4 Contract Administration and Project Management

A contract manager (Contract Manager) or designee will be authorized to administer the Contract on a day-to-day basis during its term. However, administration of this Contract implies no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract. That authority is retained by the Office.

The Office and Contractor Contract Managers are specified in Exhibit 4, Contact Information.

All written and verbal approvals and notices referenced in this Contract must be obtained from the parties' Contract Managers designated in this section or designees. Notices required to be in writing must be delivered or sent to the intended recipient by hand delivery, certified mail or receipted courier and shall be deemed received on the date received or the date of the certification of receipt.

3.5 Rules of Interpretation

In this Contract, unless otherwise defined or indicated or otherwise required by the context, the following rules of interpretation shall apply:

- a) reference to, and the definition of, any document (including any exhibits) shall be deemed a reference to such document as it may be amended, supplemented, revised or modified upon mutual written agreement by the Parties in the method prescribed herein;
- b) all references to a "section" or "Exhibit" are to a section or Exhibit of this Contract unless specified otherwise, and references to a "section" include all of its subsections unless specified otherwise;
- c) the table of contents and section headings and other captions are for the purpose of reference only and do not limit or affect the content, meaning or interpretation of the text;
- d) defined terms in the singular shall include the plural and vice versa, and the masculine, feminine, or neuter gender shall include all genders;

- e) the words “hereof”, "herein" and “hereunder”, and words of similar import, shall refer to this Contract as a whole and not to any particular provision of this Contract;
- f) the words “include”, “includes” and "including" are deemed to be followed by the phrase “without limitation”;
- g) any reference to a governmental entity or person shall include the governmental entity’s or person's authorized successors and assigns; and
- h) the words “quarterly,” “on a quarterly basis,” “quarterly meeting” or other similar terms mean, unless otherwise stated herein, once every three (3) months, beginning on the Effective Date unless otherwise stated.;
- i) the words “will” and “shall” are used interchangeably as expressions of command, not merely as expressions of future intent or expectation, unless otherwise required by the context.

4 ACCEPTANCE OF DELIVERABLES

For all Deliverables, the general Acceptance process is as follows: Throughout the project lifecycle, the Contractor completes and submits deliverables for review and approval by the Office. The Office will work with the Contractor to confirm the project governance processes for deliverable Interim or Final Acceptance. The review process is a two-step process allowing the Office to review the deliverable, provide comments and review and approve the final version.

4.1 Preparation of Deliverables

The Contractor shall use due professional care in preparing each Deliverable and implement quality assurance processes to ensure that all Deliverables submitted meet the requirements set forth in the Statement of Work, as amended from time to time. The Contractor must generate the Deliverables documented in the Office-approved Project Plan. These Deliverables will correspond to those defined in Contract Exhibit 1, Statement of Work.

- a) As part of the planning for each Deliverable, the Contractor and the Office may develop an alternative mutually agreed upon completeness and correctness criteria or Deliverable Acceptance Criteria (DAC) document in the format of Exhibit 7, Deliverable Acceptance Criteria Format, based on the Acceptance Criteria in the final Statement of Work, Exhibit 1 to this Contract, not inconsistent with the Department of Financial Services’ Project Management Office (PMO) requirements. Notwithstanding any provisions to the

contrary, any final DAC that supersedes a particular initial Contract DAC for a particular Deliverable supersedes that corresponding Deliverable only, and has no impact on any other Deliverable or the Deliverable acceptance process set out in this Contract section 4. Any modification to Deliverables or their Acceptance Criteria will not substitute for the acceptance process for Deliverables set forth in Contract section 4.4.

- b) The Office reserves the right to require update of the Project Schedule during the Implementation Period. The updated Project Schedule shall incorporate the DAC and Deliverable submittals, review cycles and Milestones (Scheduled Deliverable Acceptance Dates) for each submittal of each Deliverable per the project schedule and per the Project Plan acceptance criteria.
- c) The Contractor will commence work on each Deliverable using the ITN Statement of Work acceptance criteria unless changes to the Deliverable Acceptance Criteria (DAC) are jointly developed and mutually agreed to by the Parties prior to the schedule date for the commencement of such Deliverable. If mutual agreement cannot be reached on the DAC, then the issue must be escalated according to the escalation procedures consistent with section 20 of the Contract. The collective set of all DAC documents and acceptance of all Deliverables based upon them shall become part of the Project Interim or Final Acceptance process outlined in the Project Acceptance section of this Contract. Notwithstanding any provisions to the contrary, any final DAC that supersedes a particular initial Contract DAC for a particular Deliverable supersedes that corresponding Deliverable only, and has no impact on any other Deliverable or the Deliverable acceptance process set out in this Contract Section 4.
- d) Each Deliverable shall be complete in and of itself, and shall be consistent with any Deliverable previously produced.
- e) Prior to submitting any Deliverable to the Office for review, the Contractor will first perform any Quality Assurance activities necessary to verify that the Deliverable is complete and in conformance with its specifications. When submitting a Deliverable to the Office, the Contractor shall certify to the Office that it has completed appropriate Quality Assurance activities, and the Deliverable is ready for the Office's review and approval. Expected Quality Assurance activities may include, but are not limited to:
 - 1) Contractor project executive review of all Deliverables to ensure Deliverable achieves all the required Minimum Performance Measures.
 - 2) Peer review of Operational Deliverables to ensure compliance with applicable software design and development standards, appropriate code and data architecture for re-use and maintainability of code, appropriate security standards, and appropriate commenting and documentation.
 - 3) All applicable testing and correction of deficiencies discovered during quality assurance activities and testing, and

- 4) Appropriate editing and review of Written Deliverables for grammatical, formatting and typographic accuracy.

4.2 Submission of Deliverables

The Contractor shall submit Deliverables for review by the Office according to the Project Schedule and DAC, which submission process shall not be inconsistent with sections 4.1 and 4.2. All of the Contractor's Deliverables related to these services shall be submitted to the Office's Contract Manager for review and approval.

- a) The Office considers a Deliverable delivered when the Contractor presents it to the Office and the Office acknowledges receipt of the Deliverable for review according to the following process:
 - (1) The Contractor addresses the original (or master) document and/or an electronic copy to the Office's Contract Manager.
 - (2) The Contractor provides a paper copy and/or an electronic copy to the Office's Contract Manager. The Deliverable destination will be supplied after award of Contract.
 - (3) The Office's Contract Manager formally documents receipt of the Deliverable by time stamp on a written acknowledgement, which can be an email.
 - (4) The Office will inspect the Deliverable to ascertain that it generally conforms to the specifications of the Deliverable, that it appears to be complete, and that there is documented evidence of adequate quality assurance.
 - (5) Upon completion of the initial inspection, the Office will determine if the Deliverable will be retained for detailed review. If it is retained, the Office's Review Cycle begins. If it is not to be retained, the Office will notify the Contractor, in writing, the reasons for its decision and a list of deficiencies which must be corrected prior to subsequent presentment of the Deliverable.
- b) The Office will consider a deliverable as delivered on the same business day received if Contractor submits the Deliverable prior to 1pm ET. If submitted after 1pm ET, the Deliverable is considered to have been received the following business day.

4.3 Review of Deliverables

The Office commits to provide review and approval or specific disapproval within the Review Cycle specified for each Deliverable in the DAC. The focus of the review of each Deliverable will be to determine compliance with the Deliverable criteria and the terms and requirements of the Contract.

- a) The Office's Review Cycle for deliverables shall be five (5) business days from date of acceptance into detailed review, unless otherwise agreed to in the DAC.

- b) The Office may request a joint review session if needed. During the Deliverable review process the parties may mutually agree to extend the overall review process by up to the number of days in the Review Cycle in the DAC on an exception basis.
- c) Unless there is a written agreement (e.g., in an e-mail confirmed by both parties) between the parties during the Deliverable review process to extend the review timeline, upon conclusion of the Review Cycle review period, the Office shall provide documentation (compilation for all Office comments) of any deficiencies to be corrected based solely on the DAC or minimum Acceptance Criteria and the Review Cycle begins over unless delineated otherwise in a DAC.
- d) The Contractor shall respond to each written comment and resubmit the Deliverable for approval within the Review Cycle deadline unless otherwise mutually agreed. The Office shall have the Review Cycle period to review the updated Deliverable in accordance with the DAC. Review of the updated Deliverable shall focus upon the corrected problem areas in accordance with the DAC and is limited to those specific areas in cases where changes affect areas that are related to, dependent upon or impacted by the corrected information
- e) If the Office fails to complete the review in the agreed upon timeframe for either the initial or final Review Cycle period, the Contractor shall have the right to assess the impact and prepare a Change Request in accordance with the procedures set forth herein.
- f) Modifications to any Deliverable submission due dates shall be set forth in the Project Schedule and shall constitute notification to the Office upon distribution to the appropriate staff by Project Management. If the Contractor does not plan to meet the planned submission date, the Contractor shall notify the Office in writing at least one week in advance, if practicable, of the date and supply a revised submission date.
- g) If the Contractor fails to provide a Deliverable to the Office in a timely manner, the Office will nevertheless use commercially reasonable efforts to complete its review within a reasonable time.

4.4 Acceptance of Deliverables

- a) All Deliverables require formal acceptance by the Office. Formal acceptance will be accomplished by the Office confirming in writing that the Deliverable meets its specifications, and according to the following terms:
 - 1) For Written Deliverables, Acceptance of a Deliverable by the Office takes place when the Office has notified the Contractor of such acceptance by issuing a Final Acceptance notification in writing.
 - 2) For Operational Deliverables, Acceptance by the Office takes place after the Deliverable has operated in a production environment without material defect for a period of thirty (30) days and the Office has notified the Contractor of such

acceptance by issuing a Final Acceptance notification in writing. If the Office elects to defer placing an Operational Deliverable into live production for its own reasons, not based on concerns about outstanding material deficiencies in the Operational Deliverable, the Office may nevertheless grant Final Acceptance of the applicable Operational Deliverable in accordance with the Project Schedule as amended from time to time.

- 3) For Prepared Software Deliverables, acceptance occurs after Acceptance Testing but before the Deliverable has been put into production (Interim Acceptance) and the Office has notified the Contractor of such acceptance in writing. The approval notice of an Interim Deliverable shall describe the additional steps (in addition to operation in full production for the period identified herein)ⁱ that must be successfully completed to achieve Final Acceptance. Interim Acceptance shall be considered provisional for invoicing and payment. Interim Acceptance shall not preclude the Office from later identifying deficiencies and declining to provide Final Acceptance on that basis. Further, prior Interim or Final Acceptance of a Deliverable shall not preclude the Office from later declining to accept a subsequent Deliverable that does not operate properly due to defects in the prior Accepted Deliverable. In this case, the prior Accepted Deliverable must be corrected prior to acceptance of the subsequent Deliverable.
- b) The Contractor will be responsible for correcting all deficiencies in the Deliverable within a reasonable time and at the Contractor's expense. The Office may, at its sole discretion, choose to provide Interim Acceptance of a Deliverable where deficiencies still exist, provided the Office is reasonably assured of the Contractor's diligent efforts to correct remaining deficiencies in a timely manner.
- c) If, after three (3) opportunities (the original and two repeat efforts), the Contractor is unable to correct all deficiencies preventing Office acceptance of a Deliverable, the Office may:
 - (1) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or
 - (2) keep this Contract in force and, either by itself or through other parties, correct the remaining deficiencies in the Deliverable. In this event the Contractor shall bear the cost of any expenditure the Office incurs beyond the contract price for such Deliverable and will pay the Office. This amount will be deducted from any future payments made by the Office to the Contractor; or
 - (3) terminate this Contract for default or material breach, either in whole or in part by notice to the Contractor (and without need to afford the Contractor any further opportunity to cure).

- d) After the Contractor submits the Operational Deliverables to the Office for Interim Approval (including for User Acceptance Testing), the Office may, at any time and at its discretion and at no additional cost, halt the UAT or acceptance process if such test or process reveals deficiencies in or problems with a Deliverable. In such case, the Office may return the applicable Deliverable to the Contractor for correction and re-delivery prior to resuming the review or UAT process and, in that event, the Contractor will correct the deficiencies in such Deliverable and re-submit the Deliverable for approval after such deficiencies are resolved.
- e) Numerous Deliverables require the Office's approval. Unless otherwise authorized if the Contractor proceeds with a subsequent task before a Deliverable is approved, this work is performed at the Contractor's risk and expense.
- f) The Office reserves the right, based on the DAC criteria, to require the Contractor to revise Deliverables previously approved, at no additional cost to the Office, or reject current Deliverables, based on inconsistency.
- g) After a Deliverable has been submitted, if subsequent work invalidates some or all of the Deliverable's contents, the Contractor must update the Deliverable and resubmit it. Updates of deliverables that were originally subject to the Office's approval are also subject to approval.
- h) Upon approval of a Deliverable, the Office will send formal notice to the Contractor. A copy of the approval notice for each Deliverable must be submitted with the applicable invoice to receive payment. The Office will not process invoices that do not include the Deliverable approval letter(s) for payment. Invoices may be submitted according to the dates and phase gates agreed to in the project schedule.
- i) The Office shall not unreasonably delay or withhold acceptance of project Deliverables. Any Interim or Final Acceptance or Change Order that remains unapproved for five (5) business days shall be advanced according to subsection 4.4.2 (i) or to a supervisor/team leader/Contract Manager with written comment on impact of approval delay, if any. If not resolved within 10 business days, will be thereafter escalated according to sections 8.3 and 20 of the Contract. In the event a review of such Change Order determines the delay is caused by State delay, the Contractor will be entitled to seek a schedule extension and extension of the date any liquidated damages may apply for the next Major Deliverable by the number of days of State delay that are substantiated

4.4.1 Process for Acceptance of Operations and Maintenance Deliverables

On a monthly basis, the Contractor shall provide Operations and Maintenance Services and submit a report to include agreed upon Service Level metrics. The Contractor will submit the Operational Report no later than the due dates according to Exhibit 1, Statement of Work, attesting to activities and Deliverables completed for the reporting

period ending the preceding current reporting period. The parties may mutually agree to an alternative date of submission. The Office will provide a written notice of acceptance or comments on the submitted Operational Report in accordance with the Deliverable Acceptance Criteria (DAC) as defined in the Contract, section 4.1.

- a) The Review Cycle for the Operations and Maintenance Deliverable is in accordance with the Contract, section 4.3.
- b) The Office agrees to notify the Contractor in writing upon completion of its review either stating that the Deliverable is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected prior to acceptance of the Deliverable.
- c) If the Office delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and, within the Review Cycle defined for each Deliverable, resubmit the Deliverable in a form that identifies revisions made to the original version presented to the Office.
- d) The Contractor's cure efforts will be made at no additional charge.
- e) Upon receipt of a cured Deliverable from the Contractor, the Office will review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

4.4.2 Process for Acceptance of Prepared (including customization and configuration) Software Deliverables

- a) The Review Period for Prepared Software Deliverables is defined for each Deliverable in the Contract, section 4.3 or as mutually agreed in accordance with the Deliverable Acceptance Criteria process.
- b) The Contractor shall submit a set of proposed test plans, including test cases, scripts, data and expected outcomes.
- c) The Contractor shall submit a Software Requirements Specification or similar document that will define how the Prepared Software Deliverable will meet the requirements of the State. Upon its Acceptance, the Software Requirements Specification or similar document will be contractually binding on the Contractor.
- d) Upon Delivery of each Prepared Software Deliverable, the Office will conduct User Acceptance Testing (UAT) in accordance with the Test Plan to determine whether the Deliverable meets the criteria for Office acceptance – i.e., whether it conforms to and performs in accordance with the Software Requirements Specification without material deficiencies.
- e) The Office's UAT will consist of executing test scripts as described in the Test Plan. If the State determines during the UAT that the Prepared Software Deliverable contains any deficiencies, the Office will notify the Contractor of the deficiency by

- making an entry in an incident reporting system available to both the Contractor and the Office. The Contractor will modify promptly the Prepared Software Deliverable to correct the reported deficiencies, conduct appropriate Quality Assurance Testing (including, where applicable, Regression Testing) to confirm the proper correction of the deficiencies and resubmit the corrected version to the Office for re-testing. The Contractor will coordinate the resubmission of corrected versions of Prepared Software Deliverables with the Office so as not to disrupt the UAT process. The Office will promptly re-test the corrected version of the Software Deliverable after receiving it from the Contractor.
- f) The Office, at any time and at its discretion and at no additional cost, may halt the UAT or acceptance process if such test or process reveals deficiencies in or problems with a Deliverable. In such case, the Office may return the applicable Deliverable to the Contractor for correction and re-delivery prior to resuming the review or UAT process and, in that event, the Contractor will correct the deficiencies in such Deliverable.
 - g) Upon completion of its review, the Office will give the Contractor a written notice indicating the Office's Interim Acceptance or rejection of the Prepared Software Deliverable according to the criteria and process set out in this subsection.
 - h) Final Acceptance of each Prepared Software Deliverable of the Project shall be considered to occur when each Deliverable has been approved by the Office and has been operating in production without any material deficiency for thirty (30) calendar days of full production with all functionality. If the Office elects to defer putting a Prepared Software Deliverable into live production for its own reasons, not based on concerns about outstanding material deficiencies in the Prepared Software Deliverable, the Office may nevertheless grant Final Acceptance of the applicable Prepared Software Deliverable in accordance with the Project Plan as amended from time to time.
 - i) In the case where there exists a delay of a deliverable, the Contractor shall investigate the cause and develop a report that outlines the cause of delay. The report shall be submitted to the Office Contract Manager, the Contractor Contract Manager, and the Office's Legal Division for review.
 - j) In the event and to the extent the review reveals all or a part of the delay is caused by causes beyond the control of the Contractor, the Contractor may obtain an extension of the Project schedule pursuant to subsection 16.7.

5 PERFORMANCE STANDARDS

The contractor warrants that: (1) the Services will be performed by qualified personnel, (2) that the Services will be of the kind and quality described in the Statement of Work, (3) the Services will be performed in a professional and workmanlike manner in accordance with industry standards and practices, (4) the Services shall not and do not infringe upon the intellectual property rights, or any other proprietary rights, of any third party, and (5) that its employees shall comply with any security requirements and processes as provided by the Office, or provided by the Office's customer, for work done at the Office or other locations.

6 CONTRACTOR PERSONNEL AND THIRD PARTIES

6.1 Contractor Personnel

6.1.1. Personnel Qualifications

All persons assigned by the Contractor to the performance of Services under this Contract shall be employees of the Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or an approved Subcontractor) and shall be fully qualified to perform the work assigned to them. For the purposes of this Contract, independent contractors engaged by the Contractor solely in a staff augmentation role are treated as if they are employees of the Contractor.

The Contractor's employees, subcontractors, and any other personnel furnished by the Contractor to perform the Services must adhere to all terms of this Contract and in particular, the confidentiality and security requirements in section 11 of this Contract.

6.1.2. Key Personnel

- a) The Project Organization Chart, described in Exhibit 1, Statement of Work, provides an organization chart showing the roles of certain Key Personnel.
- b) Key Personnel are dedicated full-time to the Project for its duration except as otherwise provided in the List of Key Personnel as described in Exhibit 1, Statement of Work, or in a Change Order with respect to other individuals designated as Key Personnel for that Change Order.

6.1.3. Reassignment of Key Personnel

- a) The Office will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, the Contractor will notify the Office of the proposed assignment, will provide assurance

that the new individual has been trained in the Office's policies and procedures and introduce the individual to the appropriate Office representatives, and will provide the Office with a resume and any other information about the individual reasonably requested by the Office.

- b) The Contractor shall not remove any Key Personnel from their assigned roles or the Project without the prior written consent of the Office (an Unauthorized Removal), which consent will not be unreasonably withheld. It shall not be considered an Unauthorized Removal if Key Personnel must be replaced for reasons beyond the reasonable control of the Contractor, including illness, disability, and resignation or for cause termination of the Key Personnel's employment. It is acknowledged that career advancement of key personnel may be considered a legitimate reason for reassignment and the Office's consent to such reassignment will not be unreasonably withheld. However, the Contractor must identify a replacement approved by the Office and assign the replacement to the Project to shadow the Key Personnel he or she is replacing for a period of at least thirty (30) days prior to such Key Personnel's removal at no additional cost to the Office. Any Unauthorized Removal may be considered by the Office to be a material breach of the Contract, and entitle the Office to impose financial consequences or terminate the contract.
- 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 State, and that it would be impracticable and difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, the Contractor and the Office agree that in the case of any Unauthorized Removal, the Office may assess liquidated damages against the Contractor as specified below. For amounts due the Office as liquidated damages, the Office may at its option deduct the amount due from any money payable to the Contractor by the Office or may bill the Contractor as a separate item.
 - (i) There will be a one (1) month probation period allowed to meet unauthorized removal or replacement shadowing requirements.
 - (ii) Thereafter if the Contractor repeatedly fails to notify the Office of such change in Key Personnel, the Office will bill the Contractor a one-time charge in the amount of \$10,000
- d) In the event of the Unauthorized Removal of any Key Personnel, the Office reserves the right to recruit, hire, or otherwise contract directly with any Key Personnel who have performed Services under this Contract in the event such reassignment is proposed or occurs. In the event such reassignment is proposed Contractor releases

such Key Personnel from any non-compete agreement intended to bar such Key Personnel from employment with the Office.

- e) Contractor's failure to replace a Key Personnel subsequent to such personnel's Unauthorized Removal shall be deemed to be a material breach of this Contract.
- f) The Office reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the Office, to be unacceptable. Replacement personnel for the removed person shall have equal or superior experience and qualifications.

6.1.4. Staffing Levels

All staff and facility requirements not supplied by the Office will be supplied by the Contractor. This includes secretarial, clerical and Project administration support staff. If the level of personnel resources specified in the Contractor's project plan is insufficient to complete any Contractor Project tasks in accordance with the Contract time schedule, the Contractor shall promptly add additional qualified personnel resources to the performance of the affected tasks, at no additional charge to the State, in an amount sufficient to complete performance of the Contractor's tasks in accordance with the Contract time schedule.

6.1.5. Personnel Turnover

The Parties agree that it is in their best interests to keep the turnover rate of employees of the Contractor and its Subcontractors who are performing the Services to a reasonable minimum. Accordingly, if the Office determines that the turnover rate of such employees is excessive and so notifies the Contractor, the Contractor will provide data concerning the turnover rate of such employees, meet with the Office to discuss the reasons for the turnover rate and otherwise use commercially reasonable efforts to minimize such turnover rate. It is acknowledged that the privacy interests of employees may limit the level of detail of any information provided and in which such reasons may be discussed. If requested to do so by the Office, the Contractor will submit to the Office its proposals for reducing the turnover rate to an acceptable level. In any event, notwithstanding the turnover of personnel, the Contractor shall remain obligated to perform the Services without degradation and in accordance with the State-approved Project schedule.

6.2 Location

- a) The Contractor shall provide change management procedures, system test environments, and the dedicated resources as necessary to ensure changes are adequately tested and do not disrupt the Office's production workload. During the Implementation Period

Contractor's Project Manager shall be located in Tallahassee, FL. Selected Contractor personnel may be assigned office space to be shared with Office personnel.

- b) The Contractor or subcontractors may not utilize any offshore businesses, service, facilities, equipment, personnel or processing capabilities in carrying out the terms of this Contract in a manner that would allow the overseas dissemination of any account information nor allow network access or data transfer. Confidential data must be protected according to Contract section 11.

6.3 Employee Non-solicitation

Unless written authorization is received in advance, neither the Contractor nor the Office shall attempt to recruit, hire, or otherwise contract with the Contract Personnel of the other for the duration of the Contract and six (6) months after such Contract's termination except as provided in 6.1.3. The term "attempt to recruit" excludes:

- a) Any broad-based effort to attract applicants if not specifically designed to attract the other's Contract Personnel; and
- b) Any unsolicited inquiries made or applications submitted by one party's Contract Personnel not at the instigation of the other party. Notwithstanding this prohibition, the State reserves the right to recruit, hire, or otherwise contract directly with any Contract Personnel who have performed Services under this Contract for at least six (6) months.

6.4 Cooperation with Third Parties

The Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's properly authorized governmental entity or Business Third Parties including but not limited to technology staff under contract to the Office, and properly authorized individuals directly or indirectly accessing the Office's data on behalf of Business Third Parties, and, as reasonably requested by the State, to provide to the State's agents and other contractors with reasonable access to the Contractor's Project personnel, systems and facilities. The Office acknowledges that the Contractor's time schedules for the Project is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded the Contractor's performance under this Contract with such requests for access.

6.5 Subcontracting by the Contractor

- a) The Contractor shall have full responsibility for the successful performance and completion of all of the Services. The Office 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.

- b) The Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Office has given written consent to such delegation. The Office shall have the right of prior written approval of all Subcontractors and shall have the right to require the Contractor to replace any Subcontractors found, in the reasonable judgment of the Office, to be unacceptable.
- c) In any subcontract entered into by the Contractor for the performance of the Services, the Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to the Contractor by the terms of this Contract and to assume toward Contractor all of the material and substantive obligations and responsibilities that the Contractor, by this Contract, assumes toward the Office. The Office reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing contained in such contracts prior to providing them to the Office.
- d) The management of any Subcontractor will be 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 Office and the Contractor, the Office will not be obligated to direct payments for the Services other than to the Contractor. The Office'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.
- e) A list of the Subcontractors, if any, approved by the Office as of the execution of this Contract, together with a copy of the applicable subcontract shall be maintained by the Office's Contract Manager.
- f) Except where specifically approved in writing by the Office on a case-by-case basis, the Contractor shall provide in all of its contracts with such subcontractors and vendors that the subcontractors and vendors are bound by obligations in sections 6.1, 8.4, 11, 12, 13.1(i), 13.1(j), 13.1(k), 14, 21 and 22.8 of this Contract.

6.6 Contractor Responsibility for Personnel

The Contractor is responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by the Contractor to perform the Services.

7 PERFORMANCE

7.1 Time of Performance

- a) The Contractor shall provide the resources and shall complete all Services and Deliverables in accordance with the time schedules contained in the Statement of Work and other Exhibits governing the work. All Services and Deliverables shall be of professional quality.
- b) Without limiting the generality of subsection 6.1, the Contractor shall promptly notify the Office upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables or tasks on the scheduled due dates set forth in the latest Office-approved delivery schedule and, in such event, shall inform the Office of the projected actual delivery date.
- c) If the Contractor believes that a delay in performance by the Office has caused or will cause the Contractor to be unable to perform its obligations in accordance with specified Contract time periods, the Contractor shall promptly notify the Office and shall use commercially reasonable efforts to perform its obligations in accordance with the Contract time periods notwithstanding the State's failure. Any change in cost must be made through the Change Order process in subsection 8.3.

7.2 Contractor's Performance Bond or Alternatives

- a) The Contractor shall furnish the Office an annually renewable performance bond in an amount equal to 100 percent of the Contract value, within thirty calendar days after the effective date of this Contract. "Contract value" will not include pricing associated with the renewal years, or the value of any commercial products, but will include any amounts that any Change Orders during the Operational Period increase the amount above the Firm Price in section 10 as of each annual renewal. 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 of Florida and, and must include the following conditions:
 - (1) Beneficiary – The Office shall be named as the beneficiary of the bond. The Contractor's bond shall provide that the insurer or bonding company shall pay losses suffered by the State directly to the Office.
 - (2) Notice of Attempted Change – The Office shall receive thirty (30) calendar 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 or of the Contractor's failure to pay bond premiums.
 - (3) Premiums – The Office shall not be responsible for any premiums or assessments of the bond.
 - (4) Purpose of Bond - The performance and payment bond is to protect the State against any loss sustained through failure of the Contractor or any of its employees to faithfully perform the services required by the Contract. No payments shall be made to the Contractor until the performance bond is in place.

- (5) To be acceptable to the Office as surety for performance bonds, the Surety Company shall:
- (a) Have a currently valid Certificate of Authority, issued by the State of Florida, Office of Financial Services, authorizing it to write surety bonds in Florida,
 - (b) Have a currently valid Certificate of Authority issued by the United States Office of Treasury under sections 9304 to 9308 of Title 31 of the United States Code,
 - (c) Be in full compliance with the provisions of the Florida Insurance Code,
 - (d) Have a minimum Best's Policyholder Rating of A- or Performance Index Rating of VI from Best's Key Rating Guide.
- b) Either party may initiate a Change Order to change the bond and must negotiate for each future year based on the value of the remaining Deliverables (not based on payments made) utilizing the Change Order process. Such bond amount will not be modified unless agreed to prior to the end of the bond's annual renewal date.
- c) The surety bond provided under this section shall be used solely to the extent necessary to satisfy the damage claims made by the State pursuant to the terms of the Contract. In no event shall the surety bond be construed as a penalty bond.
- d) As an alternative to the surety bond described in this section, the Contractor may use an escrow account or irrevocable, evergreen letter of credit, which in the reasonable judgment of the Office, provides substantially equivalent protection.

8 PROJECT AND CONTRACT MANAGEMENT

8.1 Project Management Responsibility

The Contractor shall have overall responsibility for managing and successfully performing and completing its Services, subject to the overall direction and supervision of the Office and with the participation and support of the Office of Financial Services (collectively the Office) as specified in this Contract. The Contractor's duties will include monitoring and reporting the Contractor's performance of its participation and support responsibilities (as well as overall project progress). The Contractor shall provide early notice to the Office if the State's failure to perform its responsibilities (as described in Exhibit 1, Statement of Work, Roles and Responsibilities and State Resources) is likely to delay the timely achievement of any Project tasks. The Contractor shall coordinate the delivery of Services with the Office's Contract Manager.

8.2 Project Management Procedures

The Contractor agrees to use a formal software system development methodology in performing the Services. The Parties shall, within sixty (60) calendar days after the Effective Date, develop and agree on the procedures (Project Management Plan) to be employed and followed by Project

Management in overseeing the Project. The topics to be addressed by Project Management procedures, to be consistent with the Department of Financial Services' Office of Strategic Planning, Project Management Office (DFS PMO) guidelines, include, but are not limited to the following: configuration management, communication management, risk assessment and management, procurement management, status reporting, change control processes, issue identification and management processes, financial management processes, quality management processes and operational processes.

8.3 Change Order Requests

- a) Any services, functions, products and materials that would be Reasonably Necessary in order for the Contractor to perform its Services are not considered New Services. If the Office requires the Contractor to perform New Services that the Office determines are (1) materially outside the Statement of Work or (2) a modification in scope that does not require a change in pricing or (3) any reduction in scope as identified under section 17 (a Change), the Office shall submit a written request to the Contract Manager for the Contractor to furnish a proposal for carrying out the requested Change (a Change Order Request) substantially in the form attached as Exhibit 6, Change Order Request. A Change includes only material changes that the Office determines are outside the Statement of Work, Exhibit 1.
- b) Upon receipt of a Change Order Request, the Contractor shall examine and identify to the Office the implications of the requested Change on the technical specifications, Project schedule, price and method of pricing of the Services and shall submit to the Office without undue delay a written proposal for carrying out the Change.
- c) If the Change is to be performed on a time and materials basis, the hourly rates set forth in Exhibit 2-B together with hours performed, which must be documented at the applicable category of the rates set forth in the Amendment Labor Rates as described in Exhibit 2- B shall apply to the provision of such Services. Should the Contractor be of the opinion that a requested Change should not to be implemented, the Contractor will make this recommendation to the Office in writing but shall nevertheless carry out the Change if the Office directs it to do so.
- d) In the event the Contractor does not attach to its invoice for the Change, its supporting documents for materials and, for services, detailed time keeping records by category reflected in Exhibit 2-B for the work, the price for the work will be at the lowest rateⁱⁱ applied to the year the Change Order was sought, as shown on Contract Exhibit 2-B, Amendment Labor Rates.
- e) By giving the Contractor written notice within a reasonable time, the Office shall be entitled to accept the Contractor's proposal for Change, to reject it, or to reach another agreement with the Contractor.

- f) If the parties agree on carrying out a Change, a written Contract change order shall be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a Contract Change Order).
- g) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Order.
- h) If the Office requests or directs the Contractor to perform any activities that the Contractor believes constitute a Change, the Contractor must notify the Office that it believes the requested activities are a Change prior to commencing the performance of the requested activities.
 - (1) If the Contractor fails to notify the Office prior to commencing performance of the requested activities, 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.
 - (2) If the Contractor commences performance of gratuitous services outside the scope of this Contract and subsequently elects to stop performing such out-of-scope services, the Contractor must, at the request of the Office, back out or reverse any changes resulting from such performance that would adversely affect the Project.
- i) The Contractor is entitled to propose a Change to the Office, on its own initiative, if it believes this would benefit the Project, or if delays to the Project are caused by the State to the extent there is no Contractor contribution to such delay. The Contractor's proposal for such Change shall be in writing and reasonably detailed. The procedures described above in this section shall apply to any such proposal.
- j) No change order shall be effective, and no work shall be done on any change order until that change order is reduced to writing and signed by both parties.

8.4 Records and Inspections

a) Inspection of Work Performed

The State of Florida'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 of Florida's representatives (including the Auditor General, the Office, 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 all reasonable facilities and assistance for such representatives.

b) Examination of Records

The Office, including its duly authorized representatives, until the expiration of five (5) years after final payment of all amounts due under this Contract and all pending matters are closed (collectively, the Audit Period), shall have access to and the right to examine and copy any of the Contractor's books, records, documents, electronic records (including but not limited to technical audits of access control of data security), and papers pertinent to establishing the Contractor's compliance with this Contract and with applicable laws and rules, including the State's procurement rules, regulations and procedures, and actual performance of this Contract to conduct an audit, examination, excerpt and/or transcription. This provision supplements PUR 1000-18 and also applies to the books, records, documents and papers of any parent, affiliated or subsidiary organization of the Contractor, or any Subcontractor of the Contractor performing services in connection with this Contract.

c) Retention of Records

The Contractor shall maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, cost records and any other information pertaining to this Contract and to the Services, equipment, and commodities provided under this Contract) pertaining to the Contract in accordance with generally accepted accounting principles and other procedures specified by the State. Financial and accounting records shall be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later. Notwithstanding the foregoing, the Contractor shall comply with the record access provisions of Chapter 119, Florida Statutes (F. S.), and the record keeping standards of the Rules of the Office of State, Division of Library and Information Services, Florida Administrative Code (F.A.C.) Chapter 1B-24 and -26 (See http://dlis.dos.state.fl.us/recordsmgmt/gen_records_schedules.cfm for specific schedule.)

8.5 Binding Commitments

Representatives of the Contractor identified in Exhibit 4 – Contact Information shall have the authority to make binding commitments on the Contractor's behalf within the bounds set forth in such table. Such representatives may be changed from time to time upon written notice by the Contractor.

9 STATE RESPONSIBILITIES

9.1 State Performance Obligations

The Office shall require its staff to review Contractor reports and reconcile them to supporting records. The Office shall perform those tasks identified as “Office Responsibilities” in Exhibit 1, Statement of Work.

9.2 Resources

The Office shall furnish information requested by the Contractor that is reasonably necessary for the Contractor to fulfill its responsibilities under this Contract. The Office shall provide the resources identified in Exhibit 1, Statement of Work.

9.3 Property

The Office will assign to the Contractor and its Subcontractors state-owned equipment for individual use to the extent identified in Exhibit 1, Statement of Work. The Contractor is responsible for maintaining such equipment with reasonable care during the period it is assigned to such equipment. The Contractor is responsible for returning to the State any State-furnished equipment, facilities and other resources when no longer required for the Project in the same condition as when provided by the State, reasonable wear and tear excepted.

10 PAYMENT AND FINANCIAL

10.1 Pricing Structure

The Office will pay the Contractor as provided in the Contract Price, Exhibit 2-A. The Contractor shall submit an invoice for its Services in detail sufficient for a proper pre-audit and post-audit thereof.

10.2 Contract Limits

Compensation to the Contractor for Services shall be the Contract Transaction Fee as set forth in Exhibit 2-A, the Contract Price, except as may be revised by formal amendment to this Contract. Payment of the full amount is contingent on full and complete performance of all obligations of the Contractor under this Contract.

For all Services, functions and items provided or to be provided by the Contractor (and its Subcontractors, if any) under this Contract, the Office shall not be obligated to pay any amounts that exceed the charges specified in this Contract, with a reservation to apply Service Level Credits and other financial consequences as setoff against payment invoices, for nonperformance of any Service Levels in the Statement of Work according to section 16.

If the scope of the Services under the Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate, through the Change Order process, an equitable reduction in the Contractor's charges under such Statement of Work commensurate with the reduction in scope.

10.3 Invoicing and Payment

The Office authorizes and assigns to Contractor the duty of invoicing and collecting transaction fees from Deferred Presentment Providers and remittance to OFR of transaction fees collected from DPPs pursuant to section 560.404(23), F.S. Subject to the terms and conditions established by this Contract including Invoicing Deliverables as specified in the Exhibit 1, Statement of Work.

10.3.1 In General

- a) Payment to the Contractor made under this Contract will be based on the Contract Transaction Fee rate for each deferred presentment transaction as described in Exhibit 2-A Contract Price.
- b) The Contractor will submit as part of the Operations and Maintenance reporting a detailed accounting of amounts collected from DPPs in carrying out the Services.
- c) Contractor's invoice to the Office shall be subject to the following:
 - 1) From the point of system launch, the system must run in production without any material defects (operational) for at least thirty (30) days.
 - 2) Once system is operational, the Contractor may invoice the Office monthly per Contract Transaction Fee rate as established in Exhibit 2-A.
- d) In accordance with the provisions of section 215.422, F.S., vendors providing goods and services to an agency should be aware of the following time frames:
 - 1) Upon receipt, an agency has five (5) working days to inspect and approve the goods and services, unless the specifications, purchase order or contract specifies otherwise.
 - 2) An agency has twenty (20) calendar days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the date the invoice is received after the goods or services are received, inspected and approved. The Department of Financial Services is to approve the invoice in the state financial system within 20 calendar days.
- e) If a payment is not available within 40 calendar days, a separate interest penalty, computed at the rate determined by the State of Florida Chief Financial Department pursuant to section 215.422, F.S., will be due and payable, in addition to the invoice amount, to the vendor. To obtain the applicable interest rate, please refer to <http://www.dbf.state.fl.us/interest.html>. Interest penalties of less than one (1) dollar will not be enforced unless the vendor requests payment. Invoices which have to be returned

to a vendor because of vendor 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. A Vendor Ombudsman has been established with the Department of Financial Services. 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) 413-5516.

- f) Any Change Order issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services, equipment and commodities to be provided thereunder. The Contractor may invoice the Office for a Deliverable as set forth in the Change Order only after receiving written Acceptance from the Office of such Deliverable.
- d) Each invoice will show details as to charges by Service component and at a level of detail specified by the Office, which level of detail shall be as reasonably necessary to satisfy the Office's accounting and chargeback requirements. At the Office's option, and in addition to, and not in lieu of, printed invoices, the Contractor may be required by the Office to render invoices via electronic media (e.g., electronic mail attachment, computer tapes, disks or diskettes).
- e) Correct invoices will be due and payable by the Office, in accordance with the State's standard payment procedure as specified in section 215.422, F.S.

10.3.2 Operational Deliverables

For all Services, functions and items provided or to be provided by the Contractor (and its Subcontractors, if any) under this Contract, the Office shall not be obligated to pay any amounts that exceed the charges specified in this Contract, with a reservation to apply Service Level Credits and other financial consequences as setoff against payment invoices, for nonperformance of any Service Levels in the Statement of Work according to section 16.

Adjustments for Reductions in Scope of Services

If the scope of the Services under the Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate, through the Change Order process, an equitable reduction in the Contractor's charges under such Statement of Work commensurate with the reduction in scope.

10.4 Taxes

The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it 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.

10.5 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 fixed price for the Services. Accordingly, the Contractor's out-of-pocket expenses are not separately reimbursable by the Office.

10.6 Set-Off

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

10.7 Disputed Charges

The Office may withhold payment of any invoiced charges that the Office disputes in good faith pending the resolution of the dispute. The Office will notify the Contractor in writing of any disputed charges for which the Office is withholding payment and will pay all undisputed invoice charges in accordance with section 215.422, F.S. Disputed charges will be resolved in accordance with procedures applicable to the resolution of disputes described in section 215.422, F.S.

10.8 Final Payment

The making of final payment by the Office to the Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. The Contractor's acceptance of final payment by the Office 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.

11 CONFIDENTIALITY

11.1 Confidential Information

The Contractor and the Office each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. Except to the extent that such records contain trade secret information or are confidential and/or exempt from the Public Records Act, all records are subject to Chapter 119, F. S. As used in this section, "Confidential Information" shall mean information in the possession or under the control of the Office or the Contractor that is deemed "exempt" or confidential by the Florida Public Records Law, Chapter 119, F. S., any other provision of the Florida Statutes, or of Article I section 24 of the Florida Constitution.

11.2 Protection of Confidential Information

The Office and the Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. The Contractor will protect, by password and encryption software compatible with the State's, all electronic documents and web-based information that is confidential and exempt from the State's Public Records Act. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access thereto in order to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where:

- a) use of a Subcontractor is authorized under this Contract,
- b) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility, and
- c) The Contractor obligates the Subcontractor in a written Contract to protect the State's Confidential Information in confidence. At the Office's request, any employee of the Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of the employee's obligation to protect such Confidential Information from unauthorized use or disclosure.

11.3 Exclusions

Notwithstanding the foregoing, the provisions of this section will not apply to any particular information which the Office or the Contractor can demonstrate:

- a) was, at the time of disclosure to it, in the public domain;
- b) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party;
- c) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality;

- d) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further disclosure; or
- e) was independently developed by the receiving party without reference to Confidential Information of the furnishing party.
- f) Further, the provisions of this section will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose such Confidential Information, provided that the receiving party:
 - (1) promptly provides the furnishing party with notice of the legal request, and
 - (2) assists the furnishing party in resisting or limiting the scope of such disclosure as reasonably requested by the furnishing party.

11.4 No Implied Rights

Nothing contained in this section 11 (Confidentiality) shall be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

11.5 Public Records

- a) If a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any confidentiality obligations, the party shall be entitled to seek an injunction preventing such breach (or attempted or threatened to breach). The parties shall not be required to disclose to the public any materials protected by law, and disclosure of any confidential information received by the State of Florida will be governed by the provisions of Article I, section 24 of the Florida Constitution, and the Florida Public Records Act, Chapter 119, F.S., and exceptions thereto.
- b) The provision of redacted contract information on a website for public viewing does not alleviate the duty of the Office nor a state contractor to respond to a public records request. The response to the requestor may include referral to the website for viewing the identical (redacted) version. Notwithstanding the foregoing, the extent to which trade secrets as defined in section 812.081, F.S., or other confidential or protected commercial documents, data or information are exempt from Chapter 119, F.S. and, Article I section 24 of the Florida Constitution, may not be clear. Should the Contractor provide information deemed confidential or exempt from the Florida Public Records Act, then the Contractor shall place such information in an encrypted electronic form or a sealed separate envelope and provide the Office with an additional copy of its documentation containing such information that has been redacted to conceal only that information that the Contractor claims to be confidential. The Contractor is responsible for becoming familiar with the Florida Public Records Act with regard to records associated with the

Contract. If a public records request is made to the Contractor, the Contractor will: immediately notify the Office of such request; process the request as approved by the Office's Public Records section; and provide the Office progress status reports; and provide a copy of its intended redacted version in case there is a public records request. For noncompliance by the Contractor with section 119.0701, F.S., or the above requirements regarding response to public records requests (collectively Public Records Tasks), the Office at its option may enforce these provisions by exercising "Step-In" rights as described in the contract section regarding remedies or according to the termination provisions of the contract or both. If a public record request is made to the Office for documentation related to the Contract, the Office will notify the Contractor of such request if the Contractor has provided the Office with a notice of trade secret or other confidentiality as noted above. If a public record request is made to either party, the Contractor shall be solely responsible for taking whatever action it deems appropriate to legally protect its claim of exemption from the public records law. The Contractor acknowledges that the protection afforded by section 815.045, F.S., is incomplete, and it is hereby agreed that no right or remedy for damages against the Office arises from any disclosure 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 Office.

- c) The Contractor shall, to the extent required by section 119.0701, F.S., perform the following tasks to comply with section 119.0701, F.S.:
- (1) maintain public records required by the Office to perform the service;
 - (2) provide access on the same conditions and at a cost not exceeding that provided in section 119.07, F.S.,
 - (3) ensure exempt or confidential documents are not disclosed and
 - (4) transfer public records at no cost to the Office on termination, destroy confidential duplicates, and provide electronic records in a format compatible with the Office systems at no cost to the Office. The requirements are designed to avoid requiring unconventional data formats since the Contractor will be required at termination to transfer records to the Office at no cost and ensure that electronic records are in a format compatible with that of the Office to comply with section 119.0701, F.S.: using the data formats and the technology formats outlined in section 18.1 or itemized in deliverables.

For noncompliance by the Contractor, the Office shall enforce these provisions according to the step-in provisions or termination provisions in the Contract or both.

- d) The parties shall not be required to disclose to the public any materials protected by law, and disclosure of any confidential information received by the State of Florida will be governed by the provisions of Article I, section 24 of the Florida Constitution, and the Florida Public Records Act, Chapter 119, F.S., and exceptions thereto. The following

records are specifically excluded from inspection, copying, and audit rights under the Contract:

- (1) Records of the Contractor (and subcontractors) that are unrelated to the Contract;
- (2) Documents created by and for the Office or other communications related thereto that are confidential attorney work product or subject to attorney-client privilege, unless those documents would be required to be produced for inspection and copying by the Office under the requirements of Chapter 119, F.S., and, Article I section 24 of the Florida Constitution; and
- (3) The Contractor's (and subcontractors) internal cost and resource utilization data, or data related to employees, or records related to other customers of the Contractor, or any subcontractor who is not performing services under this Contract.

11.6 Data Security and Confidentiality.

- a) Data Security. The Contractor, its employees, subcontractors and agents shall comply with all security procedures of the Office in performance of this Contract. The Contractor shall provide immediate notice to the DFS Information Security Office (ISO) in the event it becomes aware of any security breach and any unauthorized transmission of State Data or of any allegation or suspected violation of security procedures of the Office. Except as required by law or legal process and after notice to the Office, the Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, Rule Chapter 71A-1ⁱⁱⁱ, Florida Administrative Code (F.A.C.), security procedures, business operations information, or commercial proprietary information in the possession of the state or the Office. The Contractor shall not be required to keep confidential 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.
- b) Loss of Data. If Contractor discovers or is notified of a breach or potential breach of security relating to the OFR Data in possession or control of Contractor or its Subcontractor, Contractor will, in addition to its other obligations under the Contract, expeditiously:
 - 1) notify the Office's Contract Manager of the breach or potential breach,
 - 2) investigate it (with the Office's participation if so desired by the Office),
 - 3) perform a Root Cause Analysis in coordination with the Office to determine the source and cause of the loss of data and prepare an Action Plan to describe what actions will be taken to respond to the breach and how such source and cause will be mitigated in the future,
 - 4) provide written reports of its findings and proposed actions to the Office for its review and approval, and
 - 5) to the extent the breach or potential breach is the Contractor's or its Subcontractor's fault, remediate the Security Breach or potential breach of security and use

Commercially Reasonable Efforts to prevent its recurrence. The Contractor will also cooperate with the Office regarding the timing and manner of notifying parties who may be adversely affected by a Security Breach to the extent such notice is required by applicable laws, rules or regulations. These obligations of the Contractor will be without prejudice to the Office's other rights and remedies under the Contract, at law, or in equity

In the event of loss of any State data or record where such loss is due to the negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Office at the Contractor's sole expense, in addition to any other damages the Office may be entitled to by law or the Contract. In the event lost or damaged data is suspected, the Contractor will perform due diligence and report findings to the Office and perform efforts to recover the data. If is unrecoverable, Contractor will pay all the related costs associated with the remediation and correction of the problems engendered by any given specific loss. Further, failure to maintain security that results in certain data release will subject the Contractor to the administrative sanctions for failure to comply with section 501.171, F.S., together with any costs to the Office of such breach of security caused by the Contractor. If State Data will reside in the Contractor's system, the Office may conduct, or request the Contractor conduct at the Contractor's expense, annual network penetration test or security audit of the Contractor's system(s) on which State Data resides. The Contractor shall:

(a) COPIES: At contract termination or expiration--submit copies of all finished or unfinished documents, data, studies, correspondence, reports and other products prepared by or for the Contractor under the Contract; submit copies of all State Data to the Office in a format to be designated by the Office in accordance with section 119.0701, FS.; shred or erase parts of any retained duplicates containing personal information (as defined by section 501.171, F.S.) of all copies to make any personal information unreadable;

(b) ORIGINALS: At contract termination or expiration--retain its original records, and maintain (in confidence to the extent required by law) the contractor's original records in UNREDACTED form, until the records retention schedule expires (according to General Contract Condition PUR 1000-18) and to reasonably protect such documents and data during any pending investigation or audit;

(c) Both Copies and Originals: Upon expiration of all retention schedules and audits or investigations--with notice to the Office, destroy all State Data from the Contractor's systems including, but not limited to, electronic data and documents containing personal information or other data that is confidential and exempt under Florida public records law.

- c) Data Protection. No State Data or information will be transmitted to, stored in, processed in, or shipped to off-shore locations or out of the United States of America regardless of method, except as required by law. Examples of these methods include (but are not limited to): FTP transfer, DVD, tape, or drive shipping; regardless of level of encryption employed. Access to State Data shall only be available to approved and authorized staff,

including remote/offshore personnel, that have a legitimate business need. Requests for remote access shall be submitted to the Office's Contract Manager. With approval, third parties may be granted time-limited terminal service access to information technology resources as necessary for fulfillment of related responsibilities. Third parties shall not be granted remote access via VPN, private line, or firewall holes. Requests for exceptions to this provision may be submitted to the Office for approval. Remote connections are subject to detailed monitoring via two-way log reviews and the use of other tools, as deemed appropriate. When remote access needs change, the ISO shall be promptly notified and access shall be removed promptly.

- d) The Contractor shall encrypt all data transmissions containing confidential or confidential and exempt information. Remote data access must be provided via a trusted method such as SSL, TLS, SSH, VPN, IPSec or a comparable protocol approved by the Office. Confidential information must be encrypted using an approved encryption technology when transmitted outside of the network or over a medium not entirely owned or managed by the Office.
- e) The Contractor agrees to protect, indemnify, defend and hold harmless the Office 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 related to this subsection.
- f) All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Office. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work.
- g) 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) and the Health Information Technology Economic and Clinical Health (HITECH) Act, their associated regulations, 45 CFR §§ 160, 162 and 164, and applicable Florida law. Disclosure to the Office is expressly permitted under federal law for complying with state law, and Florida and the Office is an "authorized public official" rather than a "covered entity" under federal law. See 45 C.F.R. §§ 164.512 and .514. The parties have established appropriate administrative, technical, and physical safeguards to protect the confidentiality 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 Florida law.

11.7 Survival

The parties' respective obligations under this section 11 shall survive the termination or expiration of this Contract.

12 PROPRIETARY RIGHTS AND SOFTWARE

12.1 Rights in Data

The State will be and remain the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives pursuant to this Contract. As between the Parties, the State Data will be and remain the property of the Office regardless of whether Contractor or the Office is in possession or control of the State Data. The Contractor 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, nor will any employee of the Contractor other than those on a strictly need to know basis have access to the State Data. The Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of section 11, the Contractor shall only use personally identifiable information as strictly necessary to provide the Services and shall disclose such information only to its employees who have a strict need to know such information. The Contractor shall comply at all times with all Laws applicable to such personally identifiable information.

12.2 Ownership of Intellectual Property in General

Any intellectual property created in the course of performance by the Contractor or its Subcontractor's under this Contract shall be subject to the provisions of section 12.1. As between the Parties, each Party will have and retain all of its right, title, and interest in and to its independent intellectual property (Independent IP), subject to any use rights and licenses expressly granted by such Party under the Contract.

12.2.1 Ownership of preexisting Software

Unless otherwise agreed in writing, (i) intellectual property rights to preexisting Contractor property will remain with the Contractor (or its applicable licensor). The Contractor will, at its cost, obtain all necessary rights to ensure that the Office receives beneficial use of said property throughout the Term. In turn, the Office agrees to abide by all applicable third party licensing restrictions (including use restrictions) relative to such property that are disclosed to and accepted by the Office in writing, (ii) intellectual property rights to all property created or otherwise developed by the Contractor specifically for the Office will be owned by the Office and the State of Florida. Proceeds derived from the sale, licensing, marketing or other authorized commercial exploitation by the Contractor (or any Subcontractor or other company) of any such agency-controlled intellectual property right shall be handled in the manner specified by applicable state statute.

- 1) Commercial off the Shelf (COTS) software: Intellectual property rights to preexisting property furnished by the Contractor (or a Subcontractor) will remain with the Contractor (or its applicable licensor). To the extent that any Contractor Tools or Software Contractor technology (Core Software) is contained in any of the Deliverables or required for the operation of the systems, the Contractor hereby grants to the Office, for good and valuable consideration already incorporated into the Contract price (i.e., at no additional charge), a non-exclusive, nontransferable, use, object code license to copy, distribute, and use (or have used on its behalf) such Contractor Tools and technology solely in connection with the Office's use of the Deliverables and the system in accordance with any limitations set forth in the Statement of Work in accordance with the terms of this

Contract. The license to such Contractor Tools and technology shall be irrevocable and shall remain valid despite any termination or expiration of this Contract unless specifically priced and agreed to by the Parties. Nothing in this section shall be deemed to permit the Office to disassemble, decompile or reverse engineer any Contractor Tools without the prior, written consent of the Contractor.

- 2) Unless otherwise specified in this Contract, with prices included or delineated in Exhibit 2, the Contractor will retain exclusive ownership of all of its hardware and COTS software used in the provision of the Services (Contractor Tools). The Office will have no residual rights to the Contractor Tools beyond the term of the Contract except the license rights specified in the preceding paragraph. The Office hereby acknowledges that certain Contractor Tools will consist of proprietary third party software. The Contractor will, at its cost, obtain all necessary rights to ensure that the Office receives beneficial use of said proprietary software throughout the Term (and beyond as specifically provided in this Contract). In turn, the Office agrees to abide by all applicable third party licensing restrictions (including use restrictions) relative to such software that have been disclosed to and accepted by the Office in writing. Under no circumstances will the Office attempt to duplicate, disassemble, decompile, or reverse engineer such software by any method.
- 3) Baseline Software provided pursuant to this Contract is being licensed to the State under the Software License Agreement attached as Exhibit 5. As to software other than Core Software that the Contractor requires for the implementation, the Third Party Software, as described in Exhibit 1, Final Statement of Work, lists the other Software required for the Project, which is to be acquired by the State. The Third Party Software list in Exhibit 1 includes all software (other than the Baseline Software) required to complete the Project and make the applications operable on a standalone basis. If any additional software is required in order for the applications to meet the requirements of this Contract, such software shall be provided to the State by the Contractor at no additional charge. Subject to the terms and conditions contained in a separate Software License Agreement, or the Contractor warrants that its software contractor grants or warrants that it shall provide and grant to the Office and the Office accepts, a non-exclusive, perpetual (unless terminated in accordance with the provisions of the Agreement) license for Use of the Core Software, Documentation, and other software contractor proprietary information provided by the Contractor or its software contractor to the Office.

12.2.2 Ownership of Core Software

In the event the Contractor or applicable software licensor absorbs into its software and provides license, upgrades, maintenance and support for a Prepared Software Deliverable that becomes Core Software, the following provisions apply to such Developed Deliverables:

- a) The applicable software licensor will own its respective Prepared Software Deliverables that are Core Software.
- b) The Office shall have a perpetual, non-exclusive, non-transferable and non-assignable license to use any such Prepared Software Deliverables including any enhancements or

customizations to the Core Software on the same terms and conditions as apply to the original software as set out in the applicable Software License Agreement.

- c) So long as the Office is current with the version of the Baseline Software Deliverables at the time an upgrade is sought, the customizations and enhancements that became Core Software will be upgraded to be functional with any such Software upgrade.

12.3 Escrow

- a) The Contractor or applicable Software Contractor is required to establish and maintain at its own cost and expense a source code escrow arrangement (Escrow Agreement) with a reputable third-party escrow company, pursuant to which the Contractor or applicable Software Subcontractor will make periodic deposits of the then-current documented source code for all Software used in the performance of the Services that the Office either owns or to which the Office (or any other State Agency or Eligible Entity) is granted license rights under the Contract if such source code has not otherwise been delivered to the Office.
- b) Notwithstanding any provisions to the contrary, in the event the licensor discontinues upgrades or discontinues maintenance and support for any such Core Software enhancements or customizations, the Office and the Office's designated third parties under contract with the Office are entitled to access the source code for such software at no charge to either the Office or the Office's designated third party under contract with the Office.
 - (1) The Contractor shall deliver to the Office's approved escrow agent (Designated Agent) a sealed copy of source code for the then current version of the all source code (Core Software plus any modifications or customizations) along with a detailed data description with data models, entity relationship diagrams, data elements and data definitions. Documented source code, as well as any corrections or enhancements, shall be deposited into the escrow within 30 days after the associated object code version of the software is first used to provide Services under the Contract, and the Office shall be notified in writing of each deposit made into the escrow. From time to time as updated versions of the Software are delivered to the Office, the Contractor (or the Contractor shall ensure that its software contractor) shall also deliver sealed versions of updated source code for the Software, together with related Documentation as it is or becomes available, to the Designated Agent or shall warrant that such has been deposited in an escrow account (the Escrow Agreement) and shall certify annually that the escrow(s) remains in effect during the term and any renewal of the Contract. The Contractor is solely responsible for maintaining the escrow agreement in place and such agreement shall not subject the Office to any contractual provisions not agreed to in writing by the Parties, nor to any law of a state other than Florida. The escrow agent will not be liable for the acts or omissions of the Office, but the Office shall not be obligated to indemnify the Contractor nor escrow agent^{iv}.

- (2) The Escrow Agreement shall contain language providing that the escrow agent shall release all materials deposited into the escrow upon the written request of the Office if any of the release conditions identified in the escrow agreement occur, which release conditions shall include at least the Software Default Events listed below. The Escrow Agent or the Designated Agent shall be bound by the confidentiality and security provisions of this Contract. The Contractor or the Contractor's trustee in bankruptcy shall authorize the Escrow Agent or Designated Agent to make and release a copy of the applicable deposited materials to the Office without additional cost upon the occurrence of one or more of the following events (Software Default Events):
 - (a) The Contractor files for or is involved in a Chapter 7 proceeding under the U.S. Bankruptcy Code, is dissolved or ceases doing business as a going concern;
 - (b) The Contractor has a receiver, administrator or manager of its property, assets, or undertakings appointed in such circumstances that the Office determines may reasonably be expected to adversely affect the Office's continuing use of the Software; or
 - (c) The applicable software Contractor ceases or is unwilling to offer or provide (either itself or through an authorized third party) continuing maintenance and support of the Software.
- (3) If the Designated Agent receives a Notice of Software Default from the Office it shall promptly notify the Contractor. Unless within fifteen (15) calendar days the Contractor files with the Designated Agent an affidavit to the effect that no Software Default Event has occurred or that such event has been cured, the Designated Agent shall deliver to Office the Developed Materials Software source code. The Designated Agent shall not retain any copies of the Software.

12.4 Works of authorship

With respect to each Deliverable identified in the Contract or its attachments as a work for hire and that constitutes a work of authorship within the subject matter or scope of U.S. Copyright Law, 17, U.S.C. sections 102-105, such work shall be deemed to be a "work made for hire" as defined in 17, U.S.C. sections 101 and all copyrights subsisting in such work for hire shall be owned exclusively by the Office pursuant to its statutory authority, except as provided above. To the extent that any Deliverable does not qualify as a 'work made for hire' for the Office under applicable copyright Law, the Contractor hereby irrevocably assigns, transfers and conveys to the Office, without further consideration, all of its right, title, and interest (including all Intellectual Property Rights) in and to such Deliverable.

12.5 Residuals

Each Party (and its affiliated entities) may use the Mental Impressions of their personnel in their business activities 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 State Agencies and Eligible Entities when referring to the Office.

12.6 Additional IT Security Requirements

12.6.1 Relationship of this subsection to subsection 11.6

This subsection is intended to supplement the provisions of subsection 11.6 with respect to the OFR Data and Personal Information without in any way limiting or derogating from the more general obligations of the Contractor under other data security sections. However, to the extent that the provisions of subsection 11.6 are more protective or stringent than those of subsection 12.8, the provisions of this subsection 11.6 will control with respect to all the OFR Data.

12.6.2 Protection of the OFR Data

- a) The OFR Data will not be utilized by Contractor or its Subcontractors for any purpose other than providing the Services under the Contract. In utilizing the OFR Data as permitted in the preceding sentence, Contractor will make the OFR Data available only to individuals and entities who are assigned by Contractor and authorized by the Office to perform the Services and only to the extent necessary for those individuals and entities to perform the specific responsibilities assigned to them in connection with Contractor’s provision of the Services.
- b) Contractor and its Subcontractors to whom the OFR Data is provided will develop, implement, maintain, enforce, and review and least annually for effectiveness a comprehensive data security program, which will include reasonable and appropriate technical, organizational and security measures against the destruction, loss, unauthorized access, use, or alteration of the OFR Data in the possession or control of Contractor or its Subcontractors and will comply in all material respects with the following: applicable Laws, including applicable Privacy Laws; applicable the Office policies, including those pertaining to information security, privacy, and records retention, as each is communicated to Contractor in accordance with the Contract; any Business Associate Contract or other form of written information security Contract entered into between the Office and Contractor (or a Subcontractor, as applicable); ^v and the standards and practices codified as ISO 27001 and 27002, as each may be modified or replaced from time to time.
- c) Contractor will document the content and implementation of its and its Subcontractors’ data security programs and associated technical, organizational, and security measures in the Project Management Plan required in the Statement of Work in sufficient detail to demonstrate compliance with the Contract. Contractor will permit the Office to review such documentation and/or to inspect Contractor’s compliance with such program.
- d) Contractor will not make (and will not permit any Subcontractor to make) any changes that materially weaken any technical, organizational or security measures in place to safeguard the OFR Data, or result in Contractor’s failure to meet any of the minimum standards set forth above without the Office’s prior written approval, nor will Contractor

or Contractor Personnel attempt to access or allow access to the OFR Data that is not required for the performance of Contractor's obligations or otherwise permitted under the Contract.

- e) The Office will have the right to establish backup security for any the OFR Data and to keep backup copies of the OFR Data in its possession if it chooses. At the Office's request, Contractor will provide the Office with downloads of the OFR Data to enable the Office to maintain such backup copies.
- f) If the Office authorizes certain Contractor Personnel to access and use (whether directly or remotely) any of its computer or electronic data storage systems, Contractor will limit such access and use solely to the authorized Contractor Personnel and to their performance of authorized Functions. All user identification numbers and passwords disclosed to Contractor or Contractor Personnel for, and any information obtained by Contractor or Contractor Personnel 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, the OFR Data.
- g) If the Office reasonably determines that any Contractor Personnel pose a security concern, the Office will have the right to deny such Contractor Personnel access to the Office's systems and the OFR Data.
- h) If Contractor discovers or is notified of a breach or potential breach of security relating to the OFR Data in the possession or control of Contractor or its Subcontractors, Contractor will, in addition to its other obligations under the Contract, expeditiously: (i) notify the Office of the breach or potential breach, (ii) investigate it (with the Office's participation if so desired by the Office), (iii) perform a Root Cause Analysis and prepare an Action Plan to describe what actions will be taken to respond to the breach and how such source and cause will be mitigated in the future, (iv) provide written reports of its findings and proposed actions to the Office for its review and approval, and (v) to the extent the breach or potential breach is within Contractor's or its Subcontractor's areas of responsibility or control, remediate the breach or potential breach of security and use Commercially Reasonable Efforts to prevent its recurrence. Contractor will also cooperate with the Office regarding the timing and manner of notifying parties who may be adversely affected by a security breach. These obligations of Contractor will be without prejudice to the Office's other rights and remedies under the Contract, at law, or in equity.
- i) To the extent Contractor removes the OFR Data from any media under its control that is taken out of service, Contractor will destroy or securely erase the media in accordance with applicable the Office Policies. Contractor shall notify the Office in writing when the destruction or erasure is complete and offer the Office the opportunity to examine the media to ensure that all State Data and Confidential Information have been removed.
- j) Contractor will not use or re-use media on which the OFR Data has been stored for any purpose unless such the OFR Data has been securely erased.

12.6.3 Supplemental Obligations Regarding Personal Information

In addition to Contractor's other obligations under subsection 11.6, Data Security, and this subsection, in the case of any Personal Information contained in or constituting part of the Office Confidential Information or the OFR Data:

- a) The term "personal identification information" (Personal Information) means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:
 1. Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
 2. Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
 3. Unique electronic identification number, address, or routing code;
 4. Medical records;
 5. Telecommunication identifying information or access device; or
 6. Other number or information that can be used to access a person's financial resources. For purposes of this section, the term "personal information" 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. In the event that information subject to HIPAA is in the OFR data, then the applicable HIPAA definitions and requirements apply.
- b) Unless otherwise agreed, Contractor will process and store all Personal Information in the United States, and will not transfer, process, or maintain Personal Information in any other jurisdiction without the Office's prior written consent.
- c) In addition to the foregoing, Contractor will comply with all Laws applicable to Personal Information 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 and Office agree to cooperate to enter into any appropriate agreements relating to such new Laws as and when they apply, including data processing Contracts between Contractor and the Office.
- d) 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 and/or at Contractor Service Delivery Centers to safeguard Personal Information, and (ii) the restrictions or prohibitions on the use or disclosure of Personal Information by Contractor. If the Parties are unable to agree on the impact of any such Law or changes in such Laws on the Contractor's performance of and/or Office's receipt and use of the Services, the Office will retain the right, in its sole discretion, to interpret such Laws or change in Laws.

- e) The Contractor agrees that the Contractor will not use Personal Information and identifying addresses and telephone numbers for any purpose other than the fulfillment of the Contractor's obligations under the Contract. The Contractor will not process, transfer or disseminate Personal Information without the approval of the Office unless expressly provided for in the Contract. The Contractor will take appropriate action to cause all Contractor Personnel having access to Personal Information to be advised of, receive training on, and comply with the terms of this subsection [12.6] or [11.6] regarding their handling of Personal Information. The Contractor will be responsible for any failure of the Contractor Personnel (or other representatives of the Contractor) to comply with the requirements of the Contract regarding Personal Information.
- f) When interfacing with Office regarding Personal Information, the Contractor will only disclose or transmit Personal Information to those Office employees and representatives who have been authorized to receive it by the Office.
- g) If the Contractor has knowledge of any unauthorized disclosure of or access to Personal Information, the Contractor will, in addition to its other obligations under this subsection [12.6], cooperate with the Office in providing any notices that the Office deems appropriate.
- h) To the extent any unauthorized disclosure of or access to Personal Information 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 following costs incurred by the Office 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 a specific period not to exceed 12 months, 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 not to exceed 30 days, (v) the cost of any other measures required under applicable Law, and (vi) any other Losses for which the Contractor would be liable under the Contract.

13 REPRESENTATIONS AND WARRANTIES

13.1 Contractor's Representations and Warranties

The Contractor represents and warrants to the State as follows:

- a) All Deliverables delivered to the State under this Contract will conform to their specifications as set forth in the Statement of Work or other Contract Exhibits, or as to be developed and agreed during the course of the Project, from the date of Final Acceptance of the Deliverable through twelve (12) months after each respective date full production commences for each go-live release of a Project phase (the Warranty Period). In the event of a breach of the foregoing warranty, the Contractor will promptly correct the affected Deliverable(s) at no charge to the Office.

- b) The parties acknowledge that certain business functions of the applications 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) or interface issues with prior Project go-live releases. Accordingly, notwithstanding the Warranty Period applicable to a particular Deliverable, the Warranty Period for Non-Routine Business Functions or interface issue will extent until 30 days after the last Non-Routine Business Functions or interface run in production without any material deficiency so that they may be run under Warranty.
- c) The Contractor warrants that its Operation and Maintenance Services will be performed in a good and workmanlike manner. The Contractor will re-perform any Services not in compliance with this warranty brought to its attention in writing within thirty (30) days after such nonconforming Operations and Maintenance Services are completed.
- d) All components of the applications will be compatible and will properly inter-operate and work together as a Fully Integrated system.
- e) The Contractor will perform all of the Services in accordance with generally accepted professional standards in the industry. The Contractor will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the Services in a manner commensurate with the requirements of this Contract.
- f) The Contract Exhibits identify all equipment and software necessary for the application to perform and operate in compliance with the Requirements and other standards of performance contained in this Contract. That, subject to the Office's responsibilities as set out in the Statement of Work, the Contractor will maintain the Service delivery infrastructure in a manner that enables the Contractor to provide the Services in accordance with the requirements of the Contract, including through periodic refreshment of the Service delivery infrastructure to keep it technologically current;
- g) The Contractor is responsible for maintaining any state-owned equipment assigned to the Contractor in writing and acknowledged by the Contractor or its Subcontractor. The Contractor will maintain such equipment in good operating condition and will undertake all repairs and preventive maintenance in accordance with the applicable manufacturer's recommendations for the period specified in this Contract.
- h) The Contractor (or the Contractor will ensure that its Software Contractor) will monitor and confirm that there are no gaps in the maintenance of the Contractor's system.
- i) The Contractor has all of the rights necessary, or ensures that its partner software contractors have the rights to convey to the Office the ownership rights or licensed use, as applicable, of any and all such materials or Deliverables. None of the Developed Materials provided by the Contractor to the Office under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party. If, under this Contract, the Contractor procures any materials or products for the Office, the Contractor shall assign or otherwise transfer to the Office, or afford the State the benefits of, any manufacturer's warranty for such materials or products. The Contractor has obtained (or will obtain) from any author or third party involved in the creation of any Deliverable, or whose Intellectual Property Rights form part of any Deliverable, all necessary written consents and waivers to ensure that the Office, and any

person claiming an interest in the Deliverable through the Office, does not misappropriate or infringe any other person's or entity's Intellectual Property Rights or moral rights.

- j) 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 subsection 21.3, 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.
- k) The Contractor (and Subcontractor) personnel will not intentionally, knowingly, or negligently introduce or allow the introduction of any Malware into the operating environment or into any State Data or Deliverable. If Malware is found to have been introduced into the operating environment of the Office (or any participating State Agency or Eligible Entity) or into any State Data or Deliverable as a result of a breach of the foregoing warranty and covenant, the Contractor will be required to use commercially reasonable efforts, at no additional charge to the Office, 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 Office (and/or applicable participating State Agency or Eligible Entity) in mitigating and reversing such losses; The Contractor may not bypass any internal or external software security measure in order to obtain access to the systems or data of the State without the written consent of the Office. This does not preclude use of encryption or password protection as provided in this Contract.
- l) In the course of providing the Services, neither the Contractor nor any Subcontractor will activate, or cause or permit to be activated, any Software code or keys that would have the effect of disabling, shutting down, or otherwise disrupting all or any portion of the Services, the operating environment of the Office
- m) 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 Office or its designees, or afford the State the benefits of, any manufacturer's warranty for such materials or products.
- n) The Contractor represents and warrants during the applicable Warranty Period that the Documentation that will be provided with respect to the application(s)
 - (1) accurately and with reasonable comprehensiveness describes the operation, functionality and use of the applications(s); and
 - (2) accurately describes in terms understandable to a typical user of the application(s) the functions and features of the applications(s) and the procedures for exercising such functions and features.
- o) The Contractor represents and warrants that the signatory below has the power and authority necessary to enter into this Contract on behalf of the Contractor and the Contractor has the power and authority to perform fully and completely its obligations under this Contract.
- p) That the Services will be fit for the business purposes described in the Contract and the applicable Statement of Work.
- q) Electronic Accessibility. If applicable, Section 508 compliance information on the supplies and services in this Contract are available on a website indicated by the

Respondent in the Response to the ITN or resulting Contract. The Electronic and Information Technology standard can be found at: <http://www.section508.gov/>.

- r) Contractor shall ensure that, as to its products and services and those it develops for the Office, the electronic and information technology accessibility requirements of Section 508 of the Rehabilitation Act Amendments, 29 USC 794 are met.

13.2 State Warranty and Covenant

In the event the Contractor is required to use or modify any State-licensed third party software (other than Third Party Software listed in Contract Exhibit 1, Statement of Work) in the course of performing the Services, the Office warrants and covenants that it will acquire or has acquired the necessary approvals and license rights for the Contractor to perform such Services, provided that the Contractor shall provide written notice, pursuant to subsection 22.9, to the Office prior to using or modifying any such third party software. In the event of a breach of this subsection by the Office, the Contractor's sole remedy, and the Office's sole obligation, will be for the Office to obtain such necessary approvals and license rights.

13.3 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 LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

14 INSURANCE

14.1 Coverage

The Contractor shall purchase and maintain insurance at the Contractor's expense for at least the following types and amounts of insurance coverage, which amounts shall be not less than any limits set forth in this subsection or required by law, whichever is greater, unless otherwise approved by the Contract Managers:

- a) Commercial General Liability Insurance (including premises/operations liability, independent contractor's liability, contractual liability, products liability, completed operations liability, property damage liability, personal injury liability, bodily injury and death coverage) in the face amount of \$5,000,000. The Contractor shall instruct the insurance carrier to also provide Commercial General Liability Insurance coverage naming the Office as an additional insured.
- 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 Employers Liability Insurance covering the Contractor's employees in an amount not less than \$500,000 per accident. 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.

- c) Professional Indemnity Insurance that shall cover professional liability and error and omissions committed by the Contractor, its agents and employees, in the performance of this Contract in the face amount of \$5,000,000. The policy shall have limits of liability of not less than \$1,000,000 per claim.
- d) Fidelity Employee Insurance and Computer Crime Insurance naming the Office as joint loss payee as their interest may appear, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to 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.
- e) Automobile liability coverage, bodily injury, property damage: \$2,000,000 Combined Single Limits. Insuring clause for both bodily injury and property damage shall be amended to provide coverage on an occurrence basis.
- f) Umbrella Liability Insurance in a minimum amount of \$15,000,000 per occurrence, which shall apply, at a minimum, to the insurance required by this subsection.

The insurers selected by the Contractor shall have an A.M. Best rating of A-, or as otherwise approved in writing by the Office, or better or, if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency, and shall be qualified and doing business in Florida. The State is exempt from and in no way liable for any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor. Each such insurance policy will include provisions generally considered standard (according to Insurance Services Office standard forms) for the type of insurance involved, including the loss payable (as applicable above) and waiver of subrogation clauses and deductible and/or self-insured retention amounts.

Except as agreed in a separate writing, no self-insurance coverage shall be acceptable unless Contractor is licensed or authorized to self-insure for a particular coverage listed above in the state of Florida, or is an insured member of a self-insurance group that is licensed to self-insure in the state of Florida.

14.2 Subcontractors

Except where the Office has approved in writing, the Contractor shall require all of its Subcontractors hereunder to purchase and maintain the insurance coverage described in subsection 14.1 (a-e) in connection with the performance of work by such Subcontractors. Alternatively, the Contractor may include any Subcontractors under the Contractor's insurance on each of its coverages required in subsection 14.1 above.

14.3 Certificates of Insurance and Other Requirements

- a) Within thirty (30) calendar days after the date of execution of this Contract, the Contractor shall furnish to the Office certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required above (the

Certificates). The Contract number must be shown on each Certificate. The Certificates shall provide that the Office shall be given at least thirty (30) calendar days prior written notice (bearing the Contract number) of termination, non-renewal or reduction in limit or in scope of coverage of such policies.

- b) Within thirty (30) calendar days following the execution of this Contract, and every year thereafter, the Contractor shall provide evidence that the Office and its agents, officers and employees are additional insureds under each applicable policy. 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 Commercial General Liability 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 Office's rights to exercise any and all remedies available to the Office under this Contract, at law or in equity.
- c) Upon request, the Contractor shall provide to the Office (and shall cause its Subcontractors to provide to the Office) certificates of insurance evidencing the required coverages, with the following provisions:
 - (1) 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 to the Office.
 - (2) Notice of Failure to Pay Premium: The insurer will notify the Office of any failure by the Contractor, to pay premiums or of any other change in the status or scope of the required coverage. The insurer will send reasonable prior written notice to the Office in advance of any changes in coverage.

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 Office's written consent, at the Office's election (but without any obligation to do so) after the Office has given the Contractor at least thirty (30) calendar days written notice, the Office may pay such premium or procure similar insurance coverage from another company or companies; and at the Office's election, the Office 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 Office.

15 INDEMNIFICATION

15.1 Patent/Copyright Infringement Indemnity

- a) The Contractor shall fully indemnify, defend, and hold harmless the State and Office from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to a Office's misuse or modification of the Contractor's products or the Office's operation or use of the Contractor's products in a manner not contemplated by the Contract or the purchase order. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Office the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Office the right to continue using the product, the Contractor shall remove the product and refund the Office the amounts paid in excess of a reasonable rental for past use. The Office shall not be liable for any royalties.
- b) The Contractor's obligations under the preceding paragraph and subsection 15.2 with respect to any legal action are contingent upon the State or Office giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at the Contractor's sole expense, and (3) assistance in defending the action at the Contractor's sole expense.

THE PROVISIONS OF THIS SECTION STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF THE CONTRACTOR, AND IS THE OFFICE'S SOLE REMEDY WITH RESPECT TO THE INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS. THIS DOES NOT OVERRIDE ANY OTHER WARRANTIES OR INDEMNIFICATION CONTAINED IN THE CONTRACT.

15.2 Other Indemnities

- a) The Indemnification provisions of ITN and its incorporated PUR 1000-19 shall apply with the following additional provisions: The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and Customers, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to:

- (1) Any claim that, if true, would arise from or be attributable to fraud, theft, or embezzlement by any Contractor (or Subcontractor) personnel;

- (2) 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 gross negligence of the Contractor (or any entity or person for which the Contractor is responsible); provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or a Customer.
- b) The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination of the Contract, with respect to any claims based on facts or conditions that occurred prior to expiration or termination.

15.3 Indemnification Procedures

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

- a) After receipt by the Office of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the Office 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. Within ten (10) days following receipt of written notice from the Office relating to any claim, the Contractor shall notify the Office 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 Office receiving the Contractor's Notice of Election, the Office shall be entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the Office in defending against the claim during such period.
- b) If the Contractor delivers a Notice of Election relating to any claim:
- (1) The Office 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 Office about the status and progress of the Defense;
 - (2) The Contractor shall, at the request of the Office, demonstrate to the reasonable satisfaction of the Office the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract;
 - (3) The Contractor shall periodically advise the Office about the status and progress of the defense and shall obtain the prior written approval of the Office before entering into any settlement of such claim or ceasing to defend against such claim, which approval shall not be unreasonably withheld; and
 - (4) To the extent that any principles of Florida governmental or public law may be involved or challenged, the Office shall have the right, at its own expense, to

control the defense of that portion of such claim involving the principles of Florida governmental or public law. Notwithstanding the foregoing, the Office may retain control of the defense and settlement of a claim by written notice to the Contractor given within ten (10) days after the Office's receipt of the Contractor's information requested by the Office pursuant to clause (2) of this paragraph if the Office determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the Office the Contractor's financial ability to carry out its defense and indemnity obligations under this section 15. Any litigation activity on behalf of the State of Florida, or any of its subdivisions pursuant to this section, must be coordinated with the Office.

- c) If the Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the Office as provided above, the Office shall have the right to defend 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 Office, the Contractor shall promptly reimburse the Office for all such reasonable costs and expenses, or at its sole option, OFR may withhold the reasonable costs and expenses from Contractor's payments.

15.4 Sovereign Immunity

The Office 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 of Florida.

16 DAMAGES AND FINANCIAL CONSEQUENCES FOR NON-PERFORMANCE

16.1 Generally

Time is of the essence in performing the Contract; this is true generally and particularly with respect to the Services identified under this initial term of this Contract. Any delay in the implementation date of the new system to be delivered under this Contract will have a specific and negative financial impact on the Office. The Contractor will promptly notify the Office upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion (or delivery) of any Service, Deliverable, or Project. The Contractor will use commercially reasonable efforts to avoid or minimize any delays in performance and will inform the Office 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 Office has caused or will cause the Contractor to be unable to perform its obligations on time, the Contractor will promptly so notify the Office and use commercially reasonable efforts to perform its obligations on time notwithstanding the Office's delay.

The following damages may be assessed or imposed by the Office at its sole discretion as the remedial financial consequences of the Contractor's failure to perform its obligations under this Contract.

16.2 Actual or other Damages

In lieu of liquidated damages, holdback or other damages described in this Contract, other damages may be assessed on the Contractor as specified in the Financial Consequences for Nonperformance identified herein or in the Statement of Work. Failure to use the appropriate technical requirements as identified in the Statement of Work will result in automatic task rejection and may not be invoiced or paid until correction of the task. Failure to complete the required duties as outlined in the Statement of Work may result in the rejection of the invoice. Notwithstanding any provisions to the contrary, written acceptance of a particular deliverable does not foreclose the Office'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 be construed to make the Contractor liable for delays that are beyond its reasonable control. Nothing in this section shall limit the Office's right to pursue its remedies for other types of damages.

16.3 Consequences for Nonconforming Deliverables and Services

The parties acknowledge that the late Delivery of any Deliverable (for Implementation or Operations and Maintenance) or insufficient delivery of Services as identified in Exhibit 1, Statement of Work, will interfere with the timely and proper completion of the Services, to the loss and damage of the Office, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the Office as a result of any such delay. Therefore, the Contractor and the Office agree that in the case of any such late or insufficient delivery, the Office shall be entitled to impose liquidated damages or other financial consequence against the Contractor as specified in this section:

(1) Implementation Deliverables:

For failure to submit an approvable Deliverable by the due date specified in the approved Project Schedule: \$1,000 per day.

(2) Operations and Maintenance Deliverables and Services

The Office and the Contractor will execute a Service Level Agreement, which will govern the ongoing Operations and Maintenance Services. If the Contractor(s) fails to meet agreed deadlines or responsibilities as outlined in the Service Level Agreement, the Office shall be entitled to impose the following liquidated damages:

(a) For failure to meet a deadline as described in the approved project Schedule or agreed-to Service Level Agreement, where the deadline relates to a defect that

prevents use of the System: \$20,000 per day that the system remains unavailable for use after the deadline, together with any direct costs incurred by the State as a result of the failure.

(b) For failure to meet a deadline as described in the approved project Schedule or agreed-to Service Level Agreement, where the deadline relates to a minor defect that does not prevent use of the System: \$5,000 per day that the deadline is not met.

(c) For failure to perform additional Services as specified in the Statement of Work, where failure prevents timely performance of additional Services as outlined in the Service Level Agreement: \$5,000 per day that the service levels are not met, together with any direct costs incurred by the State as a result of the failure.

(d) The Office will allow a three (3) month probationary period to establish Operations and Maintenance reports. Thereafter, if the reports are either not timely or lacking in quality or completeness for three consecutive months, there will be a 10% holdback in the monthly billing. This holdback will continue until the Contractor delivers two full months without delays or quality issues, at which time the 10% holdback will be released. There will be a three (3) month probation period allowed to meet billing format requirements. Thereafter, if billing format requirements are not met, the Office will suspend payment until corrective action is taken.

16.4 Consequences for Non-Conformance with Certain Contract Terms

(a) Data Security and Recovery

(i) Data Loss. The Contractor shall maintain and secure adequate back-up files of all documentation and programs utilized to process data submissions. In the event that State Data within this solution is unrecoverable, the contractor will pay the state liquidated damages in the amount of \$10,000 per 100 customer transactions impacted.

(ii) Data Security. The Contractor shall develop data security procedures to ensure only authorized access to data submissions and databases by personnel for contracted activities. The Contractor shall develop data security procedures to ensure no unauthorized access to data submissions and databases by other individuals other than authorized by the Contract or designated representatives of the Office.

(b) At the initiation of the contract, the Contractor shall meet or exceed requirements of the Department of Financial Service's Policy # 4-03, Information Technology Security Policy, a copy of which will be provided by the Contract Manager upon request. Failure to maintain security that results

in release of protected records, information or data will subject the Contractor to possible termination and to the administrative remedies for failure to comply with public records requirements or section 501.171, F.S., together with any costs to the Office resulting from a breach of security caused by the Contractor. If State Data will reside in the Contractor's system, the Office may conduct, or request the Contractor conduct at the Contractor's expense, annual network penetration test or security audit of the Contractor's system(s) on which State Data resides.

- (c) Unencrypted Exposure of Encrypted Data. Users of the Contractor's solution have the need for data sent and received by them to be protected from unauthorized viewing or use. If the Contractor's solution includes a stated feature that enables users to encrypt messages such that only the sender and intended recipients can access the messages in unencrypted form, and a message for which a user activated the encryption feature is found to have been exposed in unencrypted form through the fault or negligence of the Contractor or a due to a fault or defect in the Contractor's solution, the Contractor shall pay the Office liquidated damages in the amount of \$10,000 per reported and verified incident, with a cap of \$200,000 per month. "Incident," as used in this paragraph, means each occurrence of an exposed transaction that should have been encrypted according to the encryption feature of the Contractor's solution but was not so encrypted.
- (d) Any monetary losses due to non-performance from providing availability to the web-based system, the stability of the system, adequate safeguards to prevent unauthorized entry into the Office's account, and safeguards against potential loss due to Acts of God will be reimbursed at the same amount as the loss.
- (e) If there is a failure to perform a successful annual Disaster Recovery test after corrective actions taken according to the schedule agreed to in advance by the parties, then the Office shall be entitled to collect liquidated damages in the amount of fifty thousand dollars (\$50,000) for each Disaster Recovery test not timely implemented and successfully corrected within the timeframes required by the parties' agreed schedule.

16.5 Audits and Data Retention

The Contractor will timely cooperate in completion of all audits and data retention required by the Statement of Work. Refusal to allow auditor access as required by the Contract or failure to meet data retention requirements related to the services will be considered a material breach of the Contract and cause for termination.

16.6 Step-in Rights

- a) The Office may exercise “Step-In” rights as described below under any of the following circumstances:
- (1) If the Contractor fails to either permanently resolve an Operational Incident or implement a work-around acceptable to the Office within two Business Days after the onset of the Operational Incident, the Office may, by giving written notice to the Contractor, take over the creation and/or implementation of the corrective action plan or the resolution of the Operational Incident.
 - (2) For noncompliance by the Contractor with Public Records Tasks, or if the Contractor fails to perform a material or important Service function, as defined by the Office, for which it is responsible in accordance with the requirements of this Contract, and does not cure such failure within two (2) business days after notice thereof from the Office, the Office may, by giving written notice to the Contractor, take over the performance of such Service function or Public Records Task.
- b) If the Office exercises its Step-In rights, the Contractor must cooperate fully with the Office (including its personnel and any third parties acting on behalf of the Office) and shall provide, at no additional charge to the Office, all assistance reasonably required by the Office as soon as possible, including:
- (1) providing access to all relevant equipment, premises and software under the Contractor’s control as required by the Office (or its nominee); and
 - (2) ensuring that the Contractor personnel normally engaged in the provision of the Services are available to the Office to provide assistance which the Office may reasonably request.
- c) The Office’s Step-In rights will end, and the Office will hand back the responsibility to the Contractor, when the Contractor demonstrates to the Office’s reasonable satisfaction that the Contractor is capable of resuming provision of the affected Service functions 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.
- d) The Contractor must reimburse the Office for all reasonable costs incurred by the Office (including reasonable payments made to third parties) in connection with the Office’s exercise of Step-In rights and provision of the affected Services (Step-In Costs).
- e) The Office will continue to pay the Contractor the charges (including that portion which relates to the affected Service) due for the Services, provided that the Contractor reimburses the Office for the Step-In Costs in accordance with this section 17.

16.7 Excusable Failure

Neither party will be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused 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 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 disaster recovery plans and business continuity. Performance times shall be considered extended for a period of time equivalent to the time lost because of any such delay, provided that in the event the Contractor is delayed in its performance by reason of such cause, no such extension shall be made unless notice thereof is presented by the Contractor to Office in writing within twenty-four (24) hours after the start of the occurrence of such delay giving the reason for such delay. No payment shall be made by Office for any fees or expenses incurred by the Contractor by reason of such delay. The Contractor shall use best efforts to perform its obligations during such period of delay, and notify the Office of its abatement or cessation.

17 TERMINATION BY THE STATE

The Office may terminate this Contract without further liability or penalty to the State, its divisions, agencies, offices, commissions, officers, agents and employees for any of the following reasons:

17.1 Termination for Cause

- a) All Services performed by the Contractor prior to the termination date of this Contract shall be professionally serviced to conclusion in accordance with the requirements of the Contract. Should the Contractor fail to perform all Services under the Contract, the Contractor shall be liable to the Office for any fees or expenses that the Office may incur in securing a substitute provider to assume completion of those Services.
- b) The Contractor hereby certifies that the company is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. (See <http://www.state.gov/s/ct>). As provided in section 287.135, F. S., the Office may, at its option, terminate the Contract immediately in the event the Contractor (as a company as defined in such statute), is found to have submitted a false certification as provided under section 287.135 (5), F.S., or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Notice:^{vi} Section 287.135, F.S., would operate to make businesses ineligible to contract with the State of Florida in specified circumstances. The 2012 changes to this section were enjoined by a court of

law and upheld by an appellate court. The State has determined to not pursue enforcement of the enjoined portion of the law related to refusing to contract with vendors who engage in business operations in Cuba or Syria.

- c) **Events of Default:** Provided such failure is not the fault of the Office or outside the reasonable control of the Contractor, the following events, acts, or omissions, shall include but are not limited to, breach of material duties and events of default:
- (1) Failure to pay any and all entities, individuals, and the like furnishing labor or materials, or failure to make payment to any other entities as required herein in connection with the Contract;
 - (2) Failure to complete and maintain, within the timeframes specified between the Office and the Contractor, the implementation, ongoing performance, maintenance, and provision of Services; or the Contractor has committed multiple breaches of the Contract or a Statement of Work, whether or not cured, which the Office determines have had an aggregate or cumulative adverse effect comparable to that of a material breach of the Contract or Statement of Work;
 - (3) The commitment of any material breach of this Contract by the Contractor, failure to timely deliver a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Contract;
 - (4) Employment of an unauthorized alien in the performance of the work;
 - (5) Failure to abide by any statutory, regulatory, or licensing requirement;
 - (6) One or more of the following circumstances, uncorrected for more than thirty (30) calendar days unless within the specified thirty (30) day period, the Contractor (including its receiver or trustee in bankruptcy) provides to the Office adequate assurances, reasonably acceptable to the Office, of its continuing ability and willingness to fulfill its obligations under the Contract:
 - (a) Entry of an order for relief under Title 11 of the United States Code;
 - (b) The making by the Contractor of a general assignment for the benefit of creditors;
 - (c) The appointment of a general receiver or trustee in bankruptcy of the Contractor's business or property;
 - (d) An action by the Contractor under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.
 - (7) Entry of an order revoking the certificate of authority granted to the Contractor by the State of Florida or other licensing authority.
 - (8) The Contractor makes or has made an intentional material misrepresentation or omission in any materials provided to the Office or fails to maintain the required insurance.

- (9) The Contractor fails to maintain the performance bond or letter of credit.
- (10) The Contractor fails to maintain the required insurance herein.
- (11) The Office determines that the Surety executing a bond, if applicable, used to secure the Contractor's performance of its obligations hereunder becomes unsatisfactory.
- (12) The Contractor transfers ownership of assets in violation of the Contract.
- (13) The Contractor refuses to allow public 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.
- (14) The Contractor refuses to allow auditor access as required by the Contract;
- (15) The Contractor relocates facilities containing State Data outside the United States; or changes Subcontractors in violation of Contract Section [6.5] Subcontracts; or is in material deviation from processes or operations in violation of the program's technical specifications and required Services.
- (16) For any other cause whatsoever that the Contractor fails to perform in an acceptable manner as determined by the Office, including but not limited to failure to meet performance guarantees and/or pay associated liquidated damages or Service Credits.

17.2 Remedies in the Event of Default

- a) In the event that the Contractor breaches any of its material duties or obligations under this Contract, which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the Office, or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the Office may, having provided written notice of termination to the Contractor, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination. The notification will also provide that, should it fail to perform within the time provided, the Contractor will be found in default and removed from the Office's approved vendor list.
- b) Unless the Contractor corrects its failure to perform within the time provided, or unless the Office determines on its own investigation that the Contractor's failure is legally excusable, the Office shall find the Contractor in default and shall issue a second notice stating (i) the reasons the Contractor is considered in default, (ii) that the agency will reprocure or has reprocured the commodities or services, and (iii) and the amount of the reprocurement if known.

- c) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Contractor is responsible for all costs incurred by the Office in terminating this Contract, and any additional costs the Office may incur to procure the Services required by this Contract from other sources. Re-procurement costs are not considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract.

17.3 Termination for Convenience

The Office may terminate this Contract for its convenience, in whole or part, if the Office 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 Office. The Office shall have the right to terminate or suspend the Contract, by providing the Contractor 60 calendar day's written notice. The Contractor shall not perform any Services after it receives the notice of termination, except as necessary to complete the transition or continued portion of the Contract, if any. The Contractor shall submit to the Office within 90 calendar days of termination a request for payment of completed Services. Requests submitted later than 90 calendar days after termination will not be honored and will be returned unpaid. A combination of amounts paid before termination together with the equitable adjustment on a percentage of completion basis may not exceed the total Firm Price in subsection 10.2 as modified by approved Change Orders.

17.4 State Funding Obligation

- a) The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature, and subject to the provisions of the Proviso requirements or Legislative appropriations. The Contractor acknowledges and agrees that all funds for payments after the end of the current fiscal year are subject to the availability of a legislative appropriation for the purpose of this Contract. If funds to enable the Office to effect continued payment under this Contract are not appropriated or otherwise made available (Non-Appropriation), the Office shall have the right to terminate this Contract and the Statement of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Contractor. The Office shall, to the extent possible, give the Contractor at least thirty (30) calendar days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the Office receives notice of the final decision less than thirty (30) calendar days before the funding cutoff).
- b) 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 Office may, upon thirty (30) calendar days written notice to the Contractor, reduce the level of the Services in such manner and for such periods of time as the Office may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of such reduction on a percentage of completion basis, based upon hourly rates and hours documented at the applicable category of the rates as set forth in Amendment Labor Rates, Exhibit 2-B hereto. No other liability shall accrue against the Office for Non-Appropriation.

- c) In the event the Office terminates this Contract or reduces the level of Services to be provided by the Contractor pursuant to this subsection, the Office shall pay the Contractor for all work-in-progress performed through the effective date of the termination or reduction in level, as the case may be, to the extent funds are available. For the avoidance of doubt, this subsection will not preclude the Contractor from raising against the Office in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed prior to the effective date of termination.

17.5 Rights and Obligations upon Termination

- a) If this Contract is terminated by the Office for any reason, the Contractor shall:
 - (1) stop all work as specified in the notice of termination,
 - (2) take any action that may be necessary, or that the Office 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,
 - (3) return all materials and property provided directly or indirectly to the Contractor by any entity, agent or employee of the Office,
 - (4) transfer title in, and deliver to, the Office, unless otherwise directed, all Developed Material and a perpetual license to all Core Software Deliverables resulting from the Contract; and
- b) In the event the Office terminates this Contract for its own convenience, pursuant to section 17.3, the Contractor shall be entitled to receive compensation equitably adjusted to reflect those Services that are terminated on a percentage of completion basis, including materials and labor, based on the hourly rates for hours documented at the applicable rate on Exhibit 2-B, but which may not exceed the Firm Price in section 10 as modified by approved Change Orders, when combined with all amounts paid to the date of termination. Regardless of the basis for the termination, the Office 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 Office is for cause, the Office 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 law or equity.
- d) Upon a good faith termination, the Office 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 Office may in its sole judgment deem expedient.
- e) The Office 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 Office 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.

17.6 Default Response to Operational Incidents

- a) If a [Priority/]Severity Level 1 or Severity Level 2 Incident occurs with respect to the Services, or a circumstance or condition exists that, in the Office's determination, presents a material risk of the occurrence of a Severity Level 1 or Severity Level 2 Incident with respect to the Services (each, an Operational Incident), the Contractor shall:
 - (1) address the Operational Incident with a high level of urgency and immediately bring all required resources of the Contractor to bear on the issue;
 - (2) actively work with the Office and third parties designated by the Office in troubleshooting and identifying the root cause of the Operational Incident and in developing a corrective action plan for the Office's approval;
 - (3) to the extent that the cause of the Operational Incident is within the scope of the Contractor's responsibilities under the Contract, use all commercially reasonable efforts to resolve the Operational Incident as quickly as possible under the circumstances, which shall include working continuously until the Operational Incident is fully resolved or a work-around acceptable to the Office is implemented (such work-around to be followed by a permanent resolution within a timeframe acceptable to the Office); and
 - (4) to the extent that the cause of the Operational Incident is outside the scope of the Contractor's responsibilities under the Contract, cooperate fully with the Office and third parties in their efforts to resolve the Operational Incident.
- b) Where applicable, the permanent resolution of the Operational Incident shall include the Contractor developing and implementing processes and procedures reasonably designed to prevent recurrences of the Operational Incident.
- c) Nothing herein shall be construed to relieve the Contractor of any other obligations or responsibilities under this Contract or any Order in connection with an Operational Incident.

18 GENERAL TERMINATION AND EXPIRATION PROVISIONS

18.1 Exit Transition Assistance

- a) If at any time the Contract is canceled, terminated, or expires, the Contractor has the affirmative obligation to assist in the smooth transition of Contract services to the Office or a subsequent contractor. To assure continuing the operation of the service or activity, including but not limited to, use in transferring the service or activity back to the Office or successor contractor, one (1) year prior to expiration, or upon the Office's request, the Contractor shall deliver:
 - i) an initial exit transition services deliverable to include a non-proprietary description of the technical and service requirements for migrating to the Office or a new provider
 - ii) a standard (non-proprietary) logical description of Office data housed in the Contractor's system and a method for extracting data into a standard (non-proprietary) format (e.g. XML, CSV, etc.).
- b) Upon the earlier of eight (8) months before the expiration of the Contract or upon any notice of termination of the Contract, the Contractor shall provide transition services (Exit Transition Services) to the Office without regard to the reason for termination, as stated herein. Exit Transition Services shall be provided for up to eight (8) months during the term and after termination and will be limited to post-contract activities involving knowledge transfer for such services and deliverables and all reasonable termination assistance requested by the Office to facilitate the orderly transfer of such new System and any residual contractor services (Residual Contractor Services) to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of this Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. Such termination assistance shall be at no additional charge to the Office if the termination is for the Contractor's Default pursuant to subsection 17; otherwise the Office shall compensate the Contractor for such termination assistance on a time and materials basis, based upon the Exit Transition Plan costs in the Contractor's ITN Response. Such payment shall not be an obligation of the Office unless the hours are documented at the applicable specific rates pursuant to the Amendment Labor Rates at Exhibit 2-B. Notwithstanding any provisions to the contrary, the Contractor shall transfer to the state agency, at no cost, all public records in possession of the Contractor upon termination of the Contract and destroy any duplicate public records that are exempt or confidential and exempt, in

accordance with section 119.0701, F.S. Exit Transition Services may include, but not be limited to:

- i) continued provision of the Residual Contractor Services and Deliverables on the same terms, conditions and pricing in effect at the end of the Contract term, until the State or a succeeding vendor is prepared to provide all essential Services;
 - ii) the Contractor's cooperation with the Office, its consultant(s) and the succeeding vendor(s) designated by the Office;
 - iii) a non-proprietary explanation of the functional equivalent of the technical requirements of any Residual Contractor Services or proprietary products used to carry out the contract and all documentation supporting such functionality; a non-proprietary, denormalized, unmasked copy of the Office's data;
 - iv) usage patterns, growth rates and other information of interest to a vendor attempting to appropriately size and plan for a similar service;
 - v) if needed, assistance with an explanation of the current operations to new vendor staff;
 - vi) return of State-owned materials being utilized by the Contractor and all State data in a standard format designated by the Office; and
 - vii) in post migration status, answering reasonable questions on an as-needed basis.
- c) At a minimum, the Contractor agrees to provide to the Office data definitions, table structure, the Office's data under its control, and any custom code required allowing the Office a smooth transition to in-house or substituting vendor implementation of similar functionality to that provided by Contractor. The Contractor shall provide a specific and detailed exit strategy technical transition plan to the Office during the [Services Transition Period] after Go-Live on a schedule identified in the [Project Management Plan and Schedule] to provide for exit transition services prior to any termination or data return. At a minimum, the technical transition plan shall include but not be limited to knowledge transfer for application support, database support, a data warehouse for data continuity, and web support to the Office or its designee, and a perpetual software license for a license substantially in the form attached as Exhibit 5, without software maintenance and support, to be elected at the Office's sole option according to the price formula offered in Exhibit 2-A, Contract Price.
- d) In the event, the Contractor can no longer provide this service, the Contractor must submit a detailed transition and data return implementation plan with cost to continue this service within the Office or by its designee. The following criteria apply to closures, and return of data upon contract termination or events authorized under section 17:

- (1) The Contractor(s) agrees to return to the Office or its designee, at no charge, any system data, at any time, at the request of the Office pursuant to a notice authorized under Contract section 17. All data shall be returned to the Office no later than sixty (60) business days from request to return any or all system data by the Office, or thirty (30) business days before termination of the Contract. The data will be accompanied by both a Data Return Report and a Data Inventory.
- (2) The Contractor(s) must immediately cease services and invoicing at the fixed rate on any system data returned to the Office or its designee.
- (3) Supplemental process for return of data [standard (non-proprietary) format (e.g. XML, CSV, etc.)] upon request, or upon final contract expiration or termination: In addition to the above reports and activities, upon closure, send copies of all final data to the Office.
- (4) Supplemental process for all other data, including but not limited to DPP invoice, DPP billing, DPP financial/cash receipts, IVR call records, customer service center records, technical help desk records, and bank statements pertaining to the services performed on behalf of the Office upon final contract expiration or termination:
 - (a) Return all data in the format to be determined in the final Statement of Work (e.g. Excel or Access via email) with all current information (see requirements in the Statement of Work) within [e.g. 30] days. However, all data must be submitted to the Office within [e.g. 30] days before the end of the contract.
 - (b) Within 30 days after request by the Office issue all reports required by the Contract for each data returned. At the time the parties determine the format of the application, the Office will designate the format in which the Contractor will return the data with the source code sufficient to read it, or alternatively provide the data in a non-proprietary format.
- (5) Ensure that all access granted to information system resources has been removed, thereby preventing unauthorized access. Ensure that all access has been removed and all Office devices and tools have been returned before closing out the Contract.

18.2 Reservation of Rights

Any termination of this Contract or any Deliverable under the Statement of Work issued under it 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.

19 STOP WORK

19.1 Issuance of Stop Work Order

The Office may, at any time, by written stop work order to the Contractor, require that the Contractor stop all, or any part, of the work called for by this Contract for a period of up to ninety (90) calendar days after the stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this section 19. Upon receipt of the stop work order, 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 order during the period of work stoppage. Within the period of the stop work order, the Office shall either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in section 17.

19.2 Cancellation of Expiration of Stop Work Order

If a stop work order issued under this section 19 is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work unless the Office has provided notice of a specific Services reduction plan. 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, if: (a) the stop work order results in an increase in the time required for, or in the Contractor's costs properly allocable to, the performance of any part of this Contract; and (b) the Contractor asserts its right to an equitable adjustment within thirty (30) calendar days after the end of the period of work stoppage; provided that, if the Office decides the facts justify the action, the Office may receive and act upon a Contractor request submitted at any time before final payment under this Contract.

19.3 Allowance of Contactor Costs

- a) The Contract Manager shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
 - (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
 - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided that, if the Contract Manager decides the facts justify the action, the Contract Manager may receive and act upon the claim submitted at any time before final payment under this Contract.
- b) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Office, the Contract Manager shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

- c) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contract Manager shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order. The Office shall not be liable to the Contractor for loss of profits because of a stop work order issued under this section.

20 DISPUTE RESOLUTION

20.1 In General

- a) Any claim, counterclaim, or dispute between the Office and the Contractor relating to this Contract shall be resolved as set forth herein.
- b) For all the Contractor claims seeking an increase in the amounts payable to Contractor under this Contract, or the time for the Contractor's performance, Contractor shall submit an affidavit executed by the Contractor's Project Manager or his designee certifying that:
 - (1) the claim is made in good faith,
 - (2) the amount claimed accurately reflects the adjustments in the amounts payable to the Contractor or the time for the Contractor's performance for which the Contractor believes the Office is liable and covers all costs of every type to which the Contractor is entitled from the occurrence of the claimed event, and
 - (3) the supporting data provided with such an affidavit are current and complete to the Contractor's best knowledge and belief.

20.2 Informal Dispute Resolution

- a) All operational disputes between the parties shall be resolved under the Project Management procedures developed pursuant to subsection 8.2. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Office's Project Sponsor, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:
 - (1) The representatives of the Contractor and the Office shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
 - (2) 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.

- (3) The specific format for the discussions will be left to the discretion of the designated Office and the Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
 - (4) Following the completion of this process, the Office, or designee, shall issue a written opinion regarding the issue(s) in dispute. The opinion regarding the dispute shall be considered the Office's final action.
- b) This subsection 20.2 will not be construed to prevent a party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to subsection 20.3.

20.3 Injunctive Relief

The only circumstance in which disputes between the Office and the Contractor will not be subject to the provisions of subsection 20.2 is where a party makes a good faith determination that a breach of the terms of this Contract by the other party is such that the damages to such party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

20.4 Continued Performance

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 (dispute over payment shall not be deemed to preclude performance) and without limiting either party's right to terminate this Contract as provided in sections 17 or 18, as the case may be.

21 FEDERAL AND STATE CONTRACTUAL REQUIREMENTS

21.1 Nondiscrimination

In the performance of this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, marital status, and physical or mental disability. The Contractor further agrees that every subcontract entered into for the performance of any contract or purchase order resulting here from will contain a provision requiring non-

discrimination in employment, as herein specified, binding upon each Subcontractor. Any breach of this covenant may be regarded as a material breach of this Contract.

21.2 Statutory Violations

The Office shall consider the employment by any contractor of unauthorized aliens a violation of section 274A (e) of the Immigration and Nationality Act. Such violation shall be cause for unilateral cancellation of this Contract. 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.

21.3 Compliance with Laws

- a) The Contractor shall comply with all applicable state, federal and local laws and ordinances in providing the Services. The Contractor may be required to demonstrate compliance with such laws at the written request of the Office's Contract Manager from time to time.
- b) E-Verify Employment Verification
 - (1) 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 Office 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 Office, within thirty 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: www.dhs.gov/e-verify
 - (2) 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 Office upon request.

(3) Compliance with the terms of this Employment Eligibility Verification provision will be an express condition of the Contract and the Office may treat a failure to comply as a material breach of the Contract.

(4) 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.

c) Export Control: Contractor certifies that by entering into this contract, it is, and during the term will ensure it remains, in compliance with the U.S. export control laws.

21.4 Conflict of Interest

The Contractor must have no conflict of interest as described in Chapter 112, F.S.: During the term of the Contract, the Contractor shall not knowingly employ, subcontract with, or sub-grant to any person (including any non-governmental entity in which such person has any employment or other material interest as defined by section 112.312 (15), F.S. The Contractor must disclose the name of any officer, director, stockholder, or agent who is also an employee of the State of Florida, or any of its agencies. Further, the Contractor must disclose the name of any State employee who also, directly or indirectly, has an interest of five percent (5%) or more in the Contractor's firm or any of its subsidiaries. No Office staff shall have any interest in or receive directly or indirectly, any compensation from the Contractor's firm or any of its subsidiaries. This shall be an ongoing requirement, and failure to comply will subject the Contract to cancellation or reimbursement of all dollars paid under the Contract.

22 GENERAL

22.1 Amendments

This Contract may not be modified, amended, extended, or augmented, except by a writing executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in a writing signed by the other party.

22.2 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 law or otherwise), without the prior written consent of the other party which consent shall not be unreasonably withheld; provided, however, that the Office may assign this Contract to any other State agency, department, or division without the prior consent of

the Contractor. Any purported assignment in violation of this section shall be null and void.

- b) The Contractor may not, without the prior written approval of the Office, assign its right to receive payments due under this Contract. In the event of any such permitted assignment, the Contractor shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under this Contract that all payments shall be made to one entity shall continue.

22.3 Governing Law and Jurisdiction

This Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Florida 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 claims arising out of or in connection with this Contract, to the exclusive jurisdiction of Leon County, in whichever court jurisdiction may be proper. The Contractor agrees to appoint agents in the State of Florida to receive service of process.

22.4 Agreement Document, Execution in Counterparts and Authority to Sign

Captions and headings used in this Contract are for information and organization purposes. 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.

22.5 Relationship of the Parties (Independent Contractor Relationship)

The relationship between the Office and the Contractor is that of client and independent contractor. The Contractor is solely responsible for the manner and means by which the duties hereunder are carried out. No agent, employee, or servant of the Contractor or any of its Subcontractors is or shall be deemed to be an employee, agent or servant of the State for any reason.

22.6 Media Releases

All contacts with the news media pertaining to the subject of this Contract shall be referred to the Office Contract Manager. This includes news releases, media requests for interviews, feature articles, fact sheets or similar materials.

22.7 Endorsements and References

The Contractor agrees to permanently refrain from using or mentioning its association with the Office in advertisements, letterhead, business cards, etc. The Contractor's services to the Office

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 Office recommends or endorses the Contractor. The Contractor may not use the Office as a reference without prior approval of the Office.

22.8 Reformation and Severability

Each provision of this Contract is deemed to be severable from all other provisions of the Contract and, if one or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract shall remain in full force and effect.

22.9 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.

22.10 No Waiver of Default

The failure of a party to insist upon strict adherence to any term of this Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term, or any other term, of the Contract.

22.11 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 10, entitled Financial, section 11, entitled Confidentiality, section 12, entitled Proprietary Rights, section 15, entitled Indemnification, subsection 17.6, entitled Rights and Obligations upon Termination, and subsection 22.8, entitled Endorsements and References.

22.12 Disclosure of Litigation

22.12.1 Disclosure

The Contractor shall promptly notify the Office of any criminal litigation, investigations or proceedings which arise during the term involving the Contractor, or, to the extent the Contractor is aware, any of the Contractor's Subcontractors or any of the foregoing entities' then-current officers or directors. In addition, the Contractor shall promptly notify the Office of any civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions

thereto, to which the Contractor (or, to the extent the Contractor is aware, any Subcontractor hereunder) is a party, and which involves:

- a) software systems development or systems integration projects and which either relates to an amount in excess of \$300,000 or might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor hereunder^{vii}; or
- b) 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.

All notices under this section must be provided to the Office 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.

22.12.2 Assurances

In the event that any such Proceeding disclosed to the Office pursuant to this section, or of which the Office otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:

- (a) The ability of the Contractor (or a Subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or
- (b) Whether the Contractor (or a Subcontractor hereunder) 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 Office all reasonable assurances requested by the Office 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.

22.13 Nonexclusive Contract.

This procurement will not result in an exclusive license to provide the services described in the solicitation or the resulting Contract. The Office may, without limitation and without recourse by the Contractor, contract with other vendors to provide the same or similar services.

IN WITNESS WHEREOF the parties hereto have caused this Contract to be duly executed by their respective authorized representatives on the dates indicated below:

FOR THE CONTRACTOR:

Contractor

By

Its

Dated: _____, 201_

FOR THE OFFICE:

Florida Office of Financial Regulation

By

Its

Dated: _____, 201_

EXHIBIT 1: [Final, Negotiated] STATEMENT OF WORK

[The ITN's Statement of Work, Attachment B, is to be replaced by the final negotiated Statement of Work (SOW), the ITN version of which remains as the Statement of Need for purposes of determining what is in scope when reviewing change requests.]

EXHIBIT 2: [Final, Negotiated] COST OF SERVICES

EXHIBIT 2-A CONTRACT PRICE

[This is to be replaced by the final negotiated price and amendment hourly rates, if any]

EXHIBIT 2-B AMENDMENT LABOR RATES

[This is to be replaced by the final negotiated price and amendment hourly rates, if any]

Benchmark Report / Competitive Price Assurance

Upon request, to ensure the State continues to receive competitive market pricing, Contractor(s) shall report to the Office benchmark data.

- 1) 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.
- 2) The benchmark will emphasize those rates negotiated within the most recent twelve (12) months.
- 3) The benchmark will be made for those services that represent the State's most significant purchase volumes.
- 4) 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.
- 5) 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 thirty (30) days of notification of findings.

EXHIBIT 3: GLOSSARY OF TERMS AND ACRONYMS

Capitalized terms used in this Contract (including the Exhibits and any attachments thereto) without definition shall have the meanings ascribed below. Terms with the initial letter capitalized will have the same meaning as defined in the Invitation to Negotiate (ITN) and Statement of Work unless otherwise defined in this Contract:

“Acceptance” means a written notification that a Deliverable has been reviewed and is judged by the Office to meet the specifications contained in the Services.

“Acceptance Criteria” means pre-defined performance requirements and essential conditions that project Deliverables are measured against before they are considered complete and acceptable. The criteria must be relevant, measurable, and specific.

“Acceptance Testing” means the testing of functionality and defined Deliverable.

“Amendment Labor Rates” means the schedule of discounted hourly professional labor rates attached as Amendment Labor Rates, Exhibit [2-B]. In the event the Contractor does not attach to its invoice for the Rate, its supporting documents for materials and, for services, detailed time-keeping records by category reflected in Exhibit [2-B] for the work, the price for the work will be at the lowest rate applied to the year the invoice was issued, as shown on Exhibit [2-B].

“Application” means the system solution to be designed, constructed and deployed during the performance of the Project, including all application software, operating systems software, tools, utilities, hardware, equipment and related documentation and other materials comprising the integrated solution.

“Audit Period” has the meaning given in subsection 8.4.2.

“BAFO” means a Respondent’s Best and Final Offer Response to Invitation to Negotiate OFR ITN # ___, if applicable.

“Baseline Software” means the object code version of computer programs and any related documentation (excluding maintenance diagnostics), provided by the Contractor to the State (under reasonable and customary license terms and conditions acceptable to the Office, that is either (i) owned by the Contractor prior to the Effective Date, or (ii) owned by a third party, provided the Office has obtained the legal right from the original licensor to license such Baseline Software. Baseline Software also includes the source code version of Baseline Software where provided, and any modifications or enhancements to Baseline Software that are produced outside this Contract. Baseline Software also includes loadable micro code that enables the underlying equipment to function according to its published specifications.

“Business Day,” whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday. All references in this Contract to days are to the State’s business days unless otherwise specified.

“Business Hour,” whether capitalized or not, shall mean 8 AM to 5 PM on all business days.

“**Calendar Day**,” whether capitalized or not, shall mean all days, including weekends and holidays. The words “day” or “calendar day,” whether capitalized or not, shall mean all days, including weekends and holidays.

“**Certificates**” has the meaning given in subsection 14.3.

“**Change**” has the meaning given in subsection 8.3.

“**Change Order Request**” has the meaning given in subsection 8.3.

“**Change Order**” has the meaning given in subsection 8.3.

“**Commercially Reasonable Efforts**”

“**Confidential Information**” means information in the possession or under the control of the State or the Contractor that is exempt from public disclosure pursuant to Article I, section 24 of the Constitution of the State of Florida, the Public Records Law, Chapter 119, F.S., or to any other provision of state or federal law that serves to exempt information from public disclosure.

“**Contract**” has the meaning given in subsection 1.2.

“**Contractor**” or “**Provider**” means the business entity to which this Contract has been awarded and entered into by the Office.

“**Contract Exhibits**” means the Exhibits attached to, or referenced in, this Contract.

“**Contract Manager**” has the meaning given in subsection 3.4. The Contract Manager for the Office’s IT System Project will also verify completeness and quality of activities and tools, and provide validation that the resulting work products support the business objectives and goals of the Office. Further, the Contract Manager is to provide oversight to the project management processes as well as quality assurance of the deliverables and work products produced at various stages of the project.

“**Core Software**” means the software for which the Software vendor has within, or absorbs into, its Baseline Software and provides upgrades, maintenance and support on a continual basis.

“**COTS**” means a Commercial Off the Shelf package.

“**Cure Period**” means the period of time associated with a Deliverable and specified in Exhibit 1 during which the Contractor is correcting deficiencies of a Deliverable identified by the Office.

“**Default**” has the meaning given in subsection 17.1.

“**Deficiency**” or “**Defect**” means a problem with a Deliverable that does not meet the acceptance criteria including Deliverable Acceptance Criteria, or, if not stated in the Acceptance Criteria, then meeting the level of quality stated in this Contract or attachments; in the context of the Deliverables, material deficiency (whether or not capitalized) means a problem of such impact that a specific requirement is not operational (critical part), any situation including one that prevents use of the entire system or of its critical parts, late delivery that may interfere with the timely and proper completion of the Services, or any design, installation, testing, deployment or system restoration either (a) delayed such that it affects critical path or (b) not in accordance

the specifications contained in the Office-accepted Project Plan, and according to the criteria identified in the Deliverable Acceptance Criteria.

“**Deliverables**” means all results, items and/or materials representing goods and Services, provided, prepared and delivered or to be delivered to the Office in the course of performance under this Contract of the Services by the Contractor. [A Deliverable may be either an Operational Deliverable or a Written Deliverable.] Deliverables shall be more specifically described in definable verifiable detail in Exhibit 1 - Statement of Work.

“**Deliverable Acceptance Criteria**” has the meaning given in subsection 4.4.1

“**Delivery**” has the meaning given in subsection 4.2.

“**Department**” (DFS) means the Department of Financial Services, or its successor entity.

“**Design Specification**” means a Deliverable listed in Exhibit 1 that defines how all requirements identified in the ITN Requirements and augmented by the requirements confirmation phase will be met.

“**Desirable Conditions**” designated by the use of the words “should” or “may” in the ITN solicitation indicate desirable attributes or conditions, but are permissive in nature. Deviation from, or omission of, such a desirable feature, will not in itself cause rejection of a Response.

“**Developed Materials**” means all software and other materials produced by the Contractor or its Subcontractors in the performance of the Project, including software program code, in both object code and source code forms, and all related materials, including designs, data models, database models, object models, program listings, flow charts, application manuals, technical manuals, training manuals, user manuals, and operating procedures. The term “Developed Materials” does not include any pre-existing software, such as Baseline Software or modifications thereto produced outside this Contract, but does include all modifications, enhancements and interfaces to either Baseline Software or other pre-existing materials that are created in the performance of the Project.

“**Division of Information Systems**” (DIS or Division) means a division within the Department of Financial Services that provides technological support for operations.

“**Effective Date**” means the last date this Contract is signed below by both parties.

“**Event of Default**” has the meaning given in section 17.2

“**Expenses**” whether capitalized or not, includes expenses as described below and includes travel and lodging, which must be authorized by the Office in advance. Travel expenses, to the extent allowed by this Contract, will be reimbursed to the Contractor at a rate not to exceed that which is payable to state employees for travel and per diem as prescribed by section 112.061, Florida Statutes (F.S.), and shall be submitted in accordance with said section. Routine expenses such as local phone calls, local facsimile transmissions, routine postage, copy work, computer-assisted research services, local travel expenses, printed library materials and

local courier, word processing, clerical or secretarial services are overhead and will not be separately compensated. Non-routine office overhead expenses such as long distance phone calls, long distance facsimile transmissions, long distance courier services, bulk mailings, bulk third party copying, blueprints, and photographs must be justified to the Office and shall be reimbursed based on documented third party vendor charges. If these charges exceed \$500.00 per fiscal year, prior written approval from the Office must be obtained.

“**Final Acceptance**” has the meaning given in subsection 4.4.1 (e).

“**Force Majeure Events**” has the meaning given in subsection 16.5.

“**Fully Integrated**” or “**Seamlessly Integrated**” means two or more software components automatically sharing information and data with one another and interacting in order to complete processes that span such software components. Fully Integrated and Seamlessly Integrated also include the use of reasonable efforts to design and build a consistent look and feel for the user interfaces of various integrated components.

“**Fiscal Year**” (FY) runs from July 1st of one year to June 30th of the next calendar year.

“**Incident**” means each occurrence of an unplanned interruption to a Service, or failure of a Service to be in accordance with its requirements and specifications, including a failure of a configuration item that has not yet impacted Service (e.g., the failure of one disk from a mirror set).

“**Including**” means “including, without limitation,” wherever the word “including” appears in this Contract, whether or not such word is capitalized.

“**Installation Testing**” means testing that assures that the product has been effectively installed and is operational.

“**Integration Testing**” refers to the test phase that will test the overall integration of a Prepared Software Deliverable with previously delivered software Deliverables with which it interfaces. Integration Testing focuses on integration of all software Deliverable components, including but not limited to printing, reports, batch system, online system, remote system access, tapes, security and external interfaces.

“**Interim Acceptance**” has the meaning given in subsection 4.4.1 (f).

“**ITN**” means Invitation to Negotiate, a formal procurement method under Chapter 287, F.S.

“**Key Performance Indicators**” (KPI) means the performance measures and associated standards that clarify expectations for the Services under this Contract and demonstrate the business value the Office receives from the Contractor; also see “Performance Standards.”

“**Laws**” means any statute, regulation, ordinance, rule, order, decree, mandate or requirement enacted, issued, promulgated or imposed by any governmental authority or recognized non-governmental regulatory body or industry standard setting organization at any level (e.g., municipal, county, state, or national or international) at any time.

“**Legally Available Funds**” means funds duly appropriated or otherwise legally available for the purpose of making payments under this Contract.

“**Malware**” means (i) program code or programming instructions intentionally designed to disrupt, disable, harm, interfere with or otherwise adversely affect computer programs, data files or operations; or (ii) other code typically described as malicious code or a virus, or by similar terms, including Trojan horse, worm, and backdoor.

“**Mandatory Requirements**” means that the Office has established certain requirements with respect to Responses to be submitted by ITN Respondents. The use of “must,” “will” (except to indicate simple futurity) or “shall” in the solicitation indicates compliance is mandatory. Failure to meet mandatory requirements will cause rejection of the Response or termination of the Contract.

“**Mental Impressions**” means general ideas, concepts, know-how and techniques relating to data processing and computer programming that are learned and retained in the unaided memory of a Party’s (and its Affiliates’) personnel involved in performance of this Contract who have had access to Confidential Information or materials of the other Party (and its Affiliates) without deliberately memorizing them for purposes of reuse.

“**Milestone**” means a key event during the project management process selected for its importance in the judging of a project. Examples are the completion of a phase, completion of a major deliverable, or completion of an activity (such as a group of tasks or processes).

“**Minor Deliverable**” means a Deliverable listed in Exhibit 1 that is identified as a Minor Deliverable that does not have Liquidated Damages associated with its Delivery and Acceptance.

“**Minor Irregularity**,” used in the context of the ITN solicitation and Contract, indicates a variation from the Response terms and conditions that does not affect the price of the Response or give the ITN Respondent an advantage or benefit not enjoyed by other proposers, or does not adversely impact the interests of the Office.

“**New Services**” means all services, functions, products and materials that are requested in writing by the Office to be provided by the Contractor, which are outside the scope of the Contractor’s responsibilities under the Statement of Work issued under this Contract that are in effect at the time the Office’s request is made.

“**Non-Routine Business Functions**” means certain business functions of the applications are operated in production at a frequency that will not allow such functions to be executed during the applicable Warranty Period, such as the multi-year renewals for certain license types more particularly described in the Statement of Work.

“**Non-Appropriation**” means a Legislative act in which funds to enable the Office or to effect continued payment under this Contract are not appropriated or otherwise made available.

“**Notice of Election**” has the meaning given in subsection 15.3(a).

“**Objectives**” means the end results to be achieved by the project.

“Operational Deliverable” means any Deliverable that is to be placed into an operational environment, e.g., software or a sub-system (as distinct from Written Deliverables).

“Party” or **“Parties,”** whether or not capitalized, mean one or both parties to this Contract, unless the context requires otherwise.

“Performance Standards” means specific measurement indicators assigned to Contract tasks representing timeliness and quality of task output.

“Prepared Software Deliverable” means an augmentation of Baseline software including any configuration parameters, programmed user exits, modifications, reports, data outputs or other additions to the Baseline Software required to make the system operational for the Office.

“Privacy Law” means any Law that relates to the confidentiality, security and protection of 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 (sometimes referred to as “personally identifiable information”).

“Proceeding” has the meaning given in subsection 22.13.

“Project” is a group of related functions or activities that spans multiple days, weeks, or months and builds cumulatively toward the achievement of defined target outcomes or objectives. A Project typically has multiple phases or life-cycle stages and involves written project plans with defined interim milestones and Deliverables to measure progress toward the achievement of its target outcomes or objectives.

“Project Completion” means Acceptance of the Final Closeout Deliverable, together with all post-implementation support identified in the initial Statement of Work.

“Project Management” means the organization staffed by the State with support from the Contractor to oversee the performance of the Project.

“Project Management Office” or **“PMO”** means the DFS standards for management of information technology projects. The Contractor will be provided orientation and access to the PMO once under contract.

“Project Plan” has the meaning given in subsection 8.2.

“Quality Assurance Testing” means testing performed by the Contractor that confirms that the Prepared Software Deliverable conforms in all respects to the Design Specification and that the Deliverable has been created in a workmanlike and professional manner. Quality Assurance Testing includes without limitation system testing, integration testing, volume/stress testing, and regression testing.

“**Reasonably Necessary**” will be controlled by the Statement of Need, Attachment A to the ITN and Response together with any approved Change Orders. It will be presumed the Statement of Work as agreed will include all Deliverables to satisfy the Statement of Need.

“**Regression Testing**” means the continual re-testing of previously tested Prepared Software Deliverables to ensure that such Prepared Software Deliverables continue to operate correctly. Regression Testing is necessary to test components that may be affected by a change to another component.

“**Requirements**” means the specific business, functional, technical and other requirements of the Office to be achieved by or otherwise through the performance of the Services and the completion of the Project, which are set out in Exhibit 1, Scope or Statement of Work.

“**Residuals**” has the meaning given in section 12.5.

“**Respondent**” means the entity that submits materials to the Office in accordance with the ITN. This may also be referred to as Vendor or Proposer. The solicitation response may be referred to as Proposal or Response.

“**Review Period**” or “**Review Cycle**” means a period of time associated with a Deliverable and specified in Exhibit 1 during which the Office is examining the Deliverable and determining if it is acceptable.

“**Scope**” describes at a high level what will and will not be included as part of the project. Scope defines the project’s overall boundaries and provides a common understanding of the project for the stakeholders and the project team. It is further defined by the requirements, deliverables, schedule, and supporting information contained in the Statement of Work.

“**Services**” means all of the services, functions, equipment, software and other products and materials (including Deliverables) to be performed or provided by the Contractor and any of its Subcontractors under this Contract, as such Services are described in this Contract and any Exhibits and as such Services evolve, are enhanced and change over the Term as contemplated by this Contract, and including any services or functions not specifically described in this Contract that are reasonably required for the proper performance and provision of the Services. The term “Services” also includes any unspecified service that is inherent to the proper delivery of a specified service.

“**Standards**” mean documents that stipulate minimum levels of performance and quality for goods and services, and optimal conditions and procedures for operation.

“**State**” has the meaning given in subsection 8.1.

“**State Data**” (aka OFR Data) means any data or information of or concerning the State or the Office(s) that is provided to or obtained by the Contractor or Contractor Personnel in connection with the negotiation and execution of the Contract or the performance of the Contractor’s obligations under the Contract, including any such data and information that either (i) is created, generated, collected or processed by Contractor Personnel in the performance of

the Contractor's obligations under the Contract, including data processing input and output, performance measurements, asset information, reports, third party service and product contracts, and the Contractor's charges to the Office, or (ii) resides in or is accessed through the Office's operating environment or the Contractor's Service delivery infrastructure; as well as any data and information derived from the foregoing.

"State Review Period" means the time period as described in the Deliverables Acceptance Criteria or at the Office's discretion during which the Office is to complete its review and, as applicable, testing of a Deliverable for approval.

"Statement of Work" (SOW) is Exhibit 1 in the Contract resulting from the ITN procurement solicitation.

"Subcontractor" means a company to which the Contractor delegates performance of a portion of the Services, but does not include independent contractors engaged by the Contractor solely in a staff augmentation role.

"System Testing" means all of the testing of a Prepared Software Deliverable to be conducted by the Contractor prior to turning over the Deliverable to the Office for approval, as further described in subsection 4.3.2.

"Task" means a cohesive, individual unit of work that is part of the total work needed to accomplish a project.

"Technical Testing" includes: (1) testing of the hardware environment, network and communications environment, and peripherals (such as printers); (2) testing of the software environment (architectural and technical); (3) stress testing and benchmarking of the online applications; (4) execution at full volume of the batch applications to determine the batch window; and (5) testing of batch applications to validate that programs have sufficient startup, recovery, and restart logic. Technical Testing is conducted contemporaneously with Business Functionality Testing.

"Unauthorized Removal" has the meaning set forth in subsection 6.1.3 (b). It shall not be considered an Unauthorized Removal if Key Personnel must be replaced for reasons beyond the reasonable control of the Contractor, including illness, disability, resignation or for cause termination of the Key Personnel's employment.

"Unit Testing" means using test conditions provided in the detailed specification to test the logic of a Prepared Software Deliverable component. During Unit Testing, additional test conditions may be defined to help ensure that all logic paths are tested, and test data is created to test the software as needed.

"User Acceptance Testing" (also referred to as UAT) means the testing of Prepared Software Deliverables to be carried out by the Office with the support and assistance of the Contractor to determine whether the Deliverables should be approved or accepted by the Office.

"Vendor Bid System" (VBS) refers to the State of Florida internet-based vendor information system at http://myflorida.com/apps/vbs/vbs_www.main_menu

“Warranty Period” has the meaning set forth in subsection 13.0 (a).

“Written Deliverable” shall have the meaning assigned in subsection 4.3.1.

EXHIBIT 4: CONTACT INFORMATION

The Office’s Contract Manager is: [insert the Office’s information and a contact person]

Name	
Phone	
Fax	
Address	
Email	

The Contractor’s Contract Manager is: [insert the Contractor’s information and a contact person]

Name	
Phone	
Fax	
Address	
Email	

Binding Commitments

Representatives of the Contractor identified in the table below shall have the authority to make binding commitments on the Contractor’s behalf within the bounds set forth in such table. Such representatives may be changed from time to time upon written notice by the Contractor.

Decision Profile	Representative(s) Name
Day-to-day operational issues within the contracted scope of Services:	
Modifications to the contracted Statement of Work:	

EXHIBIT 5: SOFTWARE LICENSE AGREEMENT

or SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

Draft to be provided with the Contractor's Response. The Contractor's software license agreement is to be replaced by the final negotiated software license agreement.

EXHIBIT 6: CHANGE ORDER REQUEST FORM

This document must be completed and submitted to the appropriate Contract Manager to commence any change order.

Submitted by:

Date:

Describe the change being requested:

Identify by Requirement number the function most closely matching the functional requirements in the Statement of Need that is impacted:

Describe the reason for the requested change:
[include identification of duties of the parties associated with the need for the change]

Describe the impact, if any, on existing Deliverables and/or Milestones:

Describe additional or reduction in Work Products and/or Deliverables and/or Milestones required as a result of the requested change, if any:

Describe the impact, if any, to the existing Project Schedule.

Provide a revised Project Schedule, if appropriate:

State the estimated change, if any, to the project fees/expenditures.

Provide the rationale/methodology used to calculate any change:

FOR ENGINEERING CHANGES (No cost impact)
(Attach documents reflecting (a) the redistribution of costs and (b) the difference in price if any from the product or service offered with the Response); for schedule delays, only day for day schedule delay is available if the vendor did not cause delay.)

Approved or Disapproved: _____
DIVISION DIRECTOR: (Signature) (Date)

FOR CONTRACT AMENDMENTS

(If adding costs, attach documentation reflecting (a) detailed quote for the new service or product and (b) why the proposed new function differs from the functional requirements in the Statement of Need. In the event the Contractor does not attach to its invoice for the Change, its supporting documents for materials and, for services, detailed time keeping records by category reflected in Exhibit 2-B for the work, the price for the work will be at the lowest rate applied to the year the Change Order was sought, as shown on Contract Exhibit 2-B, Amendment Labor Rates.)

If adding costs, the change is also contingent on the following approvals:

BUDGET OFFICE:

(Signature)

(Date)

CONTRACT ADMINISTRATOR:

(Signature)

(Date)

INFORMATION TECHNOLOGY:

(Signature)

(Date)

LEGAL:

(Signature)

(Date)

The Change Order, if adding costs, is legally binding only upon proper execution of a written Contract amendment by duly authorized representatives from each of the referenced parties on the date last executed herein.

EXHIBIT 7: DELIVERABLES ACCEPTANCE CRITERIA (DAC) FORMAT

A Deliverable Acceptance Criteria Document will be defined by the Office and Contractor for each Deliverable prior to commencement of the Phase in which that Deliverable will be produced. If a DAC is not created, the Minimum Performance Standards listed in the SOW will be used to evaluate the Deliverable.

Each Deliverables Acceptance Criteria shall contain the following:

- Deliverable Summary
- Format of the Deliverable
- Roles and Responsibilities (Contractor and OFR)
- Names of OFR Reviewers
- Review Period (# business days for review and feedback)
- Expected Delivery Date
- Interdependence of this Deliverable on other Deliverables
- Acceptance Criteria (itemize all criteria that must be met for approval and acceptance)

Confirmation in the following form:

The Deliverable content and Deliverables Acceptance Criteria defined herein for Deliverable [#___] supersedes the Deliverable content and Deliverables Acceptance Criteria as defined in the Statement of Work only and it has no impact on any other deliverable or the deliverable acceptance process set out in Contract Section 4 and subsections thereof.

EXHIBIT 8: INVITATION TO NEGOTIATE AND RESPONSE

The Office's ITN as modified by any applicable BAFO, and accepted sections of Contractor's Response
