

**ATTACHMENT B**

**DRAFT CONTRACT**

**FOR**

**MOBILE COMMUNICATION SERVICES**

**CONTRACT NO: DMS-19/20-006**

**BETWEEN**

**THE STATE OF FLORIDA**

**DEPARTMENT OF MANAGEMENT SERVICES**

**AND**

**<<PARTY NAME>>**

# DRAFT CONTRACT

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## Exhibits:

Exhibit A – Definitions and Acronyms

Exhibit B – Final Statement of Work, including:

Exhibit 1 to Exhibit B – Final Service Level Agreements;

Exhibit C – Contractor's Pricing, including:

Exhibit 1 to Exhibit C – Vendor's Services and Discounts Pricing

Exhibit 2 to Exhibit C – Vendor's Device List

Exhibit 3 to Exhibit C – Vendor's Services and Discounts Pricing, Public Safety <if applicable>

Exhibit D – Instructional Document for Request for Best and Final Offer to ITN DMS-19/20-006

Exhibit E – Relevant Portions of the Contractor's Best and Final Offer to ITN DMS-19/20-006

Exhibit F – ITN DMS-19/20-006

## CONTRACT

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

The Parties enter into this Contract (Contract) in accordance with Chapters 282 and 287, Florida Statutes (F.S.), and with the negotiated terms and conditions of Invitation to Negotiate, DMS-19/20-006, Mobile Communication Services.

### SECTION 1. CONTRACT TERM AND TERMINATION

#### 1.1 Initial Term

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

#### 1.2 Renewal

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

#### 1.3 Suspension of Work and Termination

##### 1.3.1 Suspension of Work

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

##### 1.3.2 Termination for Convenience

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

##### 1.3.3 Termination for Cause

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

#### **1.3.4 Termination Assistance**

In case of termination, whether for cause or for convenience, the Contractor will provide prompt and thorough transition assistance and cooperation, including as specified in Subsection 3.24, Transition for Future Iterations of this Service, of the Statement of Work (SOW).

## **SECTION 2. CONTRACT DOCUMENTS AND HIERACHY**

The Contract including any exhibits referred to herein, 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. The Contract consists of the documents listed below, and in the event any of these documents conflict, the conflict will be resolved in the following order of priority (highest to lowest):

1. This Final Contract document;
2. Attachment A – Definitions and Acronyms;
3. Attachment B – Final Statement of Work, including:
  - a. Exhibit 1 – Final Service Level Agreements;
4. Attachment C – Contractor’s Pricing, including:
  - a. Exhibit 1 – Vendor’s Services and Discounts Pricing
  - b. Exhibit 2 – Vendor’s Device List
  - c. Exhibit 3 – Vendor’s Services and Discounts Pricing, Public Safety <if applicable>
5. Attachment D – Instructional Document for Request for Best and Final Offer to ITN DMS-19/20-006;
6. Attachment E – Relevant Portions of the Contractor’s Best and Final Offer to ITN DMS-19/20-006; and
7. Attachment F – ITN DMS-19/20-006.

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

## **SECTION 3. PAYMENT AND FEES**

### **3.1 Price Adjustments**

Pricing may be updated in accordance with SOW Section 1.5, Update Process to End User Price Lists and Vendor’s Equipment List.

### **3.2 Price Decreases**

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

### **3.2.1 Volume Discounts**

Contractor may offer additional discounts for one-time delivery of large single orders.

### **3.2.2 Preferred Pricing**

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

### **3.2.3 Sales Promotions**

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

## **3.3 Purchase Orders and Communication Service Authorizations**

A Customer may use Purchase Orders (POs) issued through MyFloridaMarketPlace (MFMP) or Purchase Orders issued through the Communications Services Authorization and Billing (CSAB) system (known as Communication Service Authorizations (CSAs) to buy commodities or services. The Department may also issue POs or CSAs on behalf of Customers. The Contractor must provide commodities or services pursuant to POs or CSAs. The PO or CSA period of performance survives the expiration of the Contract. All terms and conditions of the Contract will be incorporated into the PO or CSA and will survive the termination of the Contract. The duration of POs or CSAs must not exceed the expiration of the Contract by more than twelve (12) months, unless they have been entered into pursuant to an Extended Pricing Plan, in which case they may not exceed the expiration of the Contract by more than thirty-six (36) months. Extended Pricing Plans are discounted prices offered in exchange for a Customer's commitment to lease commodities or purchase contractual services for an extended time.

## **3.4 Payment Invoicing**

Payment will be made in accordance with section 215.422, F.S. The Contractor will be paid upon submittal of an invoice to the Department, or Customer if direct billed, after delivery and acceptance of commodities or contractual services is confirmed and the invoice is accepted by the Customer. The Contractor shall submit invoices for fees or other compensation for services or expenses in sufficient detail for a proper pre-audit and post-audit, and invoices must include the Contract number and the Contractor's Federal Employer Identification Number. The Department reserves the right to request additional documentation as needed, and Contractor will follow all invoice directives in the SOW and this Contract document.

The Contractor shall have a "No Shut Off" policy for all State agency Customer accounts. Contractor shall identify/flag all State agency Customer accounts as "Government Accounts" for which service will not be interrupted due to an outstanding balance, disputed amount owed, or late payments due.

### **3.5 Travel**

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

### **3.6 Annual Appropriation**

Pursuant to section 287.0582, F.S., the Department's performance and obligation to pay under the Contract is contingent upon an annual appropriation by the Legislature.

### **3.7 MyFloridaMarketPlace Transaction Fee**

The State of Florida, through the Department, has instituted MFMP, a statewide eProcurement system. Pursuant to section 287.057(22), F.S., all payments issued by Customers to the Contractor for purchases of commodities or contractual services will be assessed a Transaction Fee as prescribed by Rule 60A-1.031, F.A.C., or as may otherwise be established by law, which the Contractor shall pay to the State.

For payments within the State of Florida accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to subsection (2) of Rule 60A-1.031, F.A.C. By submission of these reports and corresponding payments, the Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State of Florida or its designee.

The Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in breach. VENDORS DELINQUENT IN PAYING TRANSACTION FEES SHALL BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.

### **3.8 Taxes**

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

### **3.9 Return of Funds**

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

## **SECTION 4. CONTRACT ADMINISTRATION**

### **4.1 Department's Contract Administrator**

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

Jane Doe  
<Insert division>  
<Insert agency>  
<Insert physical address>  
Telephone: (XXX) XXX-XXXX  
Email: jane.doe@xxxxx.com

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

#### **4.2 Department's Contract Manager**

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

Jane Doe  
<Insert division>  
<Insert agency>  
<Insert physical address>  
Telephone: (XXX) XXX-XXXX  
Email: jane.doe@xxxxx.com

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

#### **4.3 Department's Product Manager**

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

Jane Doe  
<Insert division>  
<Insert agency>  
<Insert physical address>  
Telephone: (XXX) XXX-XXXX  
Email: jane.doe@xxxxx.com

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

#### **4.4 Contractor's Contract Manager**

The Contractor's Contract Manager, who is primarily responsible for the Contractor's oversight of the Contract performance, will be as follows:

Jane Doe  
<Insert Contractor name>  
<Insert Contractor's physical address>

Telephone: (XXX) XXX-XXXX  
Email: jane.doe@xxxxx.com

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

#### 4.5 Contractor's Account Manager

The Contractor's Account Manager, who will serve as a liaison with the Department's Contract Administrator, will be as follows:

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

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

## SECTION 5. CONTRACT MANAGEMENT

### 5.1 Notices

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

### 5.2 Change Request

The Department's Contract Manager may authorize operational changes to services and infrastructure that do not have a pricing impact (non-billable changes) via a change request. Such authorized operational changes do not require a Contract amendment but will be memorialized in writing and placed in the Contract Managers' files. The Department reserves the right to make the final determination if a change request or Contract amendment is required. Any change that would allow the Contractor to offer less of any deliverable, including commodities, services, technology, or software, requires a Contract amendment. Vendor's Equipment List and End User Price List updates must be made in accordance with SOW Section 1.5, End User Price Lists (EUPLs) and Vendor's Device List, and may not require an amendment or change request.

### 5.3 Diversity Reporting

The State of Florida supports its diverse business community by creating opportunities for woman-, veteran-, and minority-owned small business enterprises to participate in procurements and contracts. The Department encourages supplier diversity through certification of woman-, veteran-, and minority-owned small business enterprises and provides advocacy, outreach, and networking through regional business events. For additional information, please contact the Office of Supplier Diversity (OSD) at [osdinfo@dms.myflorida.com](mailto:osdinfo@dms.myflorida.com).

Upon request, the Contractor will report to the Department its spend with business enterprises certified by the OSD. These reports must include the time period covered, the



name and Federal Employer Identification Number of each business enterprise utilized during the period, commodities and contractual services provided by the business enterprise, and the amount paid to the business enterprise on behalf of each Customer purchasing under the Contract.

#### **5.4 Designated Centralized Nonprofit Agency**

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

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

Additional information about the designated centralized nonprofit agency and the commodities or contractual services it offers is available at [https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/state\\_contracts\\_and\\_agreements/\(contractType\)/4577](https://www.dms.myflorida.com/business_operations/state_purchasing/state_contracts_and_agreements/(contractType)/4577).

#### **5.5 PRIDE**

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

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

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

### **SECTION 6. COMPLIANCE WITH LAWS**

#### **6.1 Conduct of Business**

The Contractor must comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority. These may include, but are not limited to, Chapters 282 and 287, F.S., Subtitle 60FF, F.A.C., the Communications Assistance for Law Enforcement Act, the Payment Card Industry DSS, IRS Publication

1045, Section 274A of the Immigration and Nationality Act, the Americans with Disabilities Act, Health Insurance Portability and Accountability Act (HIPAA) (including executing any Business Associate Agreements as requested by Customers), and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. The Contractor must comply with and must assist the Department and Customers with compliance with Subtitle 60FF, F.A.C., (and Subtitle 60GG, F.A.C., if applicable).

## **6.2 Dispute Resolution, Governing Law, and Venue**

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

## **6.3 Department of State, Registration**

Consistent with Chapters 605 through 623, F.S., the Contractor must provide the Department with conclusive evidence of a certificate of status, not subject to qualification, if a Florida business entity, or of a certificate of authorization if a foreign business entity.

## **6.4 Suspended, Convicted, and Discriminatory Vendor Lists**

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

## **6.5 Scrutinized Companies—Termination by the Department**

The Department may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), F.S., or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel. Notwithstanding the foregoing, the Parties are aware of the Eleventh Circuit Court's decision *in Odbrecht Constr. v. Sec'y*, Fla. DOT, 715 F.3d 1268 (11<sup>th</sup> Cir. Fla. 2013), and agree that the provisions of sections 287.135(1)-(5), F.S., pertaining to a company engaged in business operations in Cuba or Syria shall not apply to this Contract unless and until the Eleventh Circuit Court's decision in *Odebrecht Constr. v. Sec'y*, Fla. DOT, 715 F.3d 1268 (11<sup>th</sup> Cir. Fla. 2013) is overturned.

## **6.6 Cooperation with Inspector General**

Pursuant to section 20.055(5), F.S., Contractor, and its subcontractors, if any, understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Contractor must provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but will not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor agrees to reimburse the State of Florida for the reasonable costs of investigation incurred by the Inspector General or other authorized State of Florida official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State of Florida which results in the suspension or debarment of the Contractor. Such costs include, but will not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees.

## **6.7 E-Verify**

The Contractor (and its subcontractors) have an obligation to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees. By executing this Contract, the Contractor certifies that it is registered with, and uses, the E-Verify system for all newly hired employees. The Contractor must obtain an affidavit from its subcontractors in accordance with paragraph (2)(b) of section 448.095, F.S., and maintain a copy of such affidavit for the duration of the Contract. In order to implement this provision, the Contractor shall provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five (5) days of Contract execution.

This section serves as notice to the Contractor regarding the requirements of section 448.095, F.S., specifically sub-paragraph (2)(c)1, and the Department's obligation to terminate the Contract if it has a good faith belief that the Contractor has knowingly violated section 448.09(1), F.S. If terminated for such reason, the Contractor will not be eligible for award of a public contract for at least one (1) year after the date of such termination. The Department reserves the right to order the immediate termination of any contract between the Contractor and a subcontractor performing work on its behalf should the Department develop a good faith belief that the subcontractor has knowingly violated section 448.095(1), F.S.

## **SECTION 7. WORKERS' COMPENSATION AND GENERAL LIABILITY INSURANCE, AND INDEMNIFICATION**

### **7.1 Workers' Compensation Insurance**

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

## **7.2 General Liability Insurance**

The Contractor shall maintain insurance sufficient to adequately protect the Department and Customers from all claims or liability for personal injury or property damage arising out of, resulting from the performance of, or in connection with the operation of, the Contract. All insurance shall be with insurers authorized to transact the applicable line of insurance business in the State of Florida. The Contractor shall provide the Department with Certification(s) of Insurance evidencing that all appropriate coverage is in place and showing the Department to be an additional insured within thirty (30) days after Contract execution and on the Contract anniversary date each year of the Contract.

The Contractor must submit via email, to the Department's Contract Manager, notice of any cancellation or nonrenewal at least ten (10) calendar days prior to cancellation or nonrenewal. In the event of cancellation or nonrenewal, the Contractor will be responsible for securing a replacement insurance policy in accordance with this section within thirty (30) Business Days after the final date of the cancelled or nonrenewed policy.

## **7.3 Indemnification**

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

Without limiting this indemnification, the Department or Customer may provide the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense.

## **SECTION 8. PUBLIC RECORDS, TRADE SECRETS, DOCUMENT MANAGEMENT, AND INTELLECTUAL PROPERTY**

### **8.1 Public Records**

Solely for the purpose of this section, the Department's Contract Manager is the agency custodian of public records. If, under this Contract, the Contractor is providing services and is acting on behalf of the Department, as provided in section 119.0701, F.S., the Contractor shall:

1. Keep and maintain public records required by the Department to perform the service.
2. Upon request from the Department's custodian of public records, provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.

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

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

#### **8.2 Protection of Trade Secrets or Confidential Information**

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

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

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

#### **8.3 Document Management and Record Retention**

The Contractor must retain sufficient documentation to substantiate claims for payment under the Contract and all other records, electronic files, papers, and documents that were

made in relation to the Contract, including those required by Section 6.6, Cooperation with Inspector General. Contractor must retain all documents related to the Contract for five (5) years after expiration of the Contract, or, if longer, the period required by the General Records Schedules maintained by the Florida Department of State available at:<http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>.

#### **8.4 Intellectual Property**

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

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

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

### **SECTION 9. DATA SECURITY REQUIREMENTS**

#### **9.1 Duty to Secure State Data**

The Contractor will maintain the security of State Data, including, but not limited to, keeping a secure area around any displayed or otherwise visible State Data and ensuring such data is stored and secured when not in use. The Contractor will be responsible for ensuring that all Persons it contracts with to maintain, store, or process State Data on its behalf will comply with all data security requirements of this section. The Contractor will also comply with any other State or federal rules and regulations regarding security of information. The State will remain the owner of all State Data and any other data made available by the State to the Contractor pursuant to this Contract.

Unless otherwise agreed in writing, the Contractor and its subcontractors will not perform any of the services under this Contract from outside of the United States. The Contractor will not allow, through its action or inaction, any State Data to be sent by any medium, transmitted, or to be Accessed outside of the United States.

The Contractor shall comply with section 501.171, F.S. Additionally, the Contractor shall reimburse the Department for any costs incurred providing the notifications required by subsections 501.171(3) and (4), F.S., if the Contractor is responsible for a breach. For purposes of this paragraph, "breach," is as defined in section 501.171(1)(a), F.S.

## 9.2 State Data Access

The Contractor shall retain a list of all Persons, as defined in Attachment E – Definitions and Acronyms, with Access to State Data, including a statement confirming that each Person has passed the background screening required herein. This statement shall not include the substance of the screening results, only that the Person has passed the screening.

The Contractor shall create a written policy for the protection of State Data, including a policy and procedure for Access to State Data. The Contractor shall retain the policy and information required in this subsection in accordance with Section 8.3, Document Management and Record Retention. The documents are subject to disclosure within thirty-six hours upon written or oral demand by the Department or its designated agents or auditors and are subject to audit and screening.

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

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

The damages that would result from the Contractor's failure to compile, retain, and disclose the written policy and information required in this subsection are by their nature impossible to ascertain presently and will be difficult to ascertain in the future. The issues involved in determining such damages will be numerous, complex, and unreasonably burdensome to prove. The Contractor therefore agrees to credit the Department the sum of \$10,000 for each breach of this subsection. The parties acknowledge that these credits are liquidated damages, exclusive of any other right to damages, not intended to be a penalty, and solely intended to compensate for unknown and unascertainable damages.

## 9.3 Violations of Data Security Requirements

A "Security Breach" in this Section 9 means an unauthorized Access of State Data. Good faith Access of State Data by a Person, as defined in Attachment E – Definitions and Acronyms, does not constitute a security breach, provided that the information is not used for a purpose unrelated to the furtherance of the Contract or subject to further unauthorized Access. However, unauthorized Access includes incidents where Persons with authorized Access for certain purposes otherwise gain Access for unauthorized purposes.

The Contractor agrees that a Security Breach, including any violations of Section 9.1, Duty to Secure State Data, will entitle the State to a credit commensurate with the Department and Customer's internal staffing and administrative costs associated with managing the Security Breach or violation of Section 9.1, Duty to Secure State Data, as determined by the Department. Such credits will not preclude the State from recovering other damages

it may suffer as a result of the Security Breach or violation of Section 9.1, Duty to Secure State Data.

#### **9.4 Notification Requirements**

In the event of a Security Breach, including any violations of Section 9.1, Duty to Secure State Data, or a credible allegation or suspicion of a Security Breach or violation of Section 9.1, Duty to Secure State Data (as determined by the Contractor or the Department), the Contractor must notify the Department's Contract Manager and the affected Customer as expeditiously as practicable, but in all instances no later than one (1) calendar day of knowledge of the Security Breach or credible allegation or suspicion of such.

Notification is required regardless of the number of persons or type of State Data affected or potentially affected. The notification must be clear and conspicuous and include a description of the following:

1. The incident in general terms;
2. The type of information that was subject to the violations of Section 9.1, Duty to Secure State Data, or credible allegation or suspicion of Security Breach;
3. The type and number of entities and individuals who were, or potentially have been, affected by the incident; and
4. The actions taken by the Contractor to protect the State Data from further unauthorized Access. However, the description of those actions in the notice may be general so as not to further increase the risk or severity of the Security Breach.

The Contractor must also as expeditiously as practicable, but no later than thirty-six hours from the time of discovery, set up a conference call with the Department's Contract Manager. The conference call invitation must contain a brief description of the nature of the event. When possible, a thirty (30) minute notice will be given to allow Department personnel to be available for the call. If the designated time is not practical for the Department, an alternate time for the call will be scheduled. All available information about the Security Breach or suspected Security Breach must be shared on the call. The Contractor must answer all questions based on the information known at that time and answer additional questions as additional information becomes known. The Contractor must provide the Department with final documentation of the incident including all remedial actions of the Contractor.

#### **9.5 Other Indemnifications and Credit Monitoring**

The Contractor shall be fully liable for the actions of all Persons, as defined in Attachment E – Definitions and Acronyms, and shall fully defend, indemnify, and hold harmless the Department, Customers, the State of Florida, its officers, directors and employees from any claims, suits, actions, damages, proceedings, and costs of every name and description, including attorney's fees, to the extent arising or resulting from a violation by the Contractor or a Person, as defined in Attachment E – Definitions and Acronyms, of Section 9, Data Security, and Section 13, Background Screening and Security, resulting in the Security Breach of State Data. The Contractor shall provide credit monitoring services at its own cost for those individuals affected or potentially affected by a Security Breach of these sections by the Contractor or a Person, as defined in Attachment E – Definitions and Acronyms, for a twelve-month period of time following the Security Breach.



## **SECTION 10. GRATUITIES AND LOBBYING**

### **10.1 Gratuities**

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

### **10.2 Lobbying**

Funds provided under this Contract shall not be used to violate the provisions of sections 11.062 and 216.347, F.S. Pursuant to section 287.058(6), F.S., the Contract does not prohibit the Contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the Contract after Contract execution and during the Contract's term.

## **SECTION 11. CONTRACT MONITORING**

### **11.1 Performance Standards**

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

### **11.2 Performance Deficiencies and Service Level Agreements**

Service Level Agreements (SLAs) dictate the levels of service delivery for individual services. The parties acknowledge that these SLAs contain financial consequences, as required by section 287.058, F.S., are exclusive of any other right to damages, and are not intended to be a penalty. The Contractor therefore agrees to credit the Department consistently with the Contract, including as set forth in Attachment C - Service Level Agreements. Financial consequences that are due to a Customer after the completion of service, or exceed any payment due to the Contractor, shall be submitted by check rather than as a credit.

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

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

If the corrective action plan is unacceptable to the Department, or implementation of the plan fails to remedy the performance deficiencies, the Department will retain ten percent (10%) of the total invoice amount and may suspend or cancel PO(s) or CSA(s) or may suspend work or terminate the Contract as set forth in Section 1.3, Suspension of Work and Termination. The retainage will be withheld until the Contractor resolves the performance deficiencies. If the performance deficiencies are resolved, the Contractor may invoice the Department for the retained amount. If the Contractor fails to resolve the performance deficiencies, the retained amount will be forfeited in order to compensate the Department for the performance deficiencies and the Department may suspend or cancel PO(s) or CSA(s) or may terminate the Contract as set forth in Section 1.3, Suspension of Work and Termination.

### **11.3 Timely Performance**

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

### **11.4 Force Majeure, Notice of Delay, and No Damages for Delay**

The Contractor will not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor will notify the Department or Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. The foregoing will constitute the Contractor's sole remedy or excuse with respect to delay. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages will be asserted by the Contractor. The Contractor will not be entitled to an increase in the Contract price or payment of any kind from the Department or Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor will perform at no increased cost, unless the Department or Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State of Florida or to Customers, in which case the Department or Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to

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

## **SECTION 12. CONTRACT AUDITS**

### **12.1 Performance or Compliance Audits**

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

### **12.2 Payment Audit**

Records of costs incurred under terms of the Contract will be maintained in accordance with Subsection 8.3, Document Management and Record Retention. Records of costs incurred will include the Contractor's general accounting records, together with supporting documents and records of the Contractor and all subcontractors performing work, and all other records of the Contractor and subcontractors considered necessary by the Department, State of Florida's Chief Financial Officer, or the Office of the Auditor General.

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

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

### **13.1 Background Screening**

In addition to any background screening required by the Contractor as a condition of employment, the Contractor warrants that it will conduct a criminal background screening of, or ensure that such a screening is conducted for, each of its employees, subcontractor personnel, independent contractors, leased employees, volunteers, licensees, or other person, hereinafter referred to as "Person" or "Persons," operating under its direction with Access to State Data or who enter either the premises or facilities where State Data is stored or accessible. Contractor is not required to conduct the aforementioned background screening of a Person if that Person does not have Access to State Data and if that Person, whenever on Customer premises or facilities, is escorted by Customer authorized personnel.

The Contractor warrants that all Persons will have passed the background screening described herein before they have Access to State Data or begin performing services

under the Contract. The look-back period for such background screenings shall be for a minimum of six (6) years where six (6) years of historical information is available.

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

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

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

### **13.2 Disqualifying Offenses**

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

1. Computer related crimes
2. Information technology crimes;
3. Fraudulent practices;
4. False pretenses;
5. Fraud;
6. Credit card crimes;
7. Forgery;
8. Counterfeiting;
9. Violations involving checks or drafts;
10. Misuse of medical or personnel records; and
11. Felony theft.

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

made pursuant to this subsection. The Department reserves the right to require removal of any Persons from performing work on the Contract for any reason.

### **13.2.1 Refresh Screening**

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

### **13.2.2 Self-Disclosure**

The Contractor shall ensure that all Persons have a responsibility to self-report within three (3) calendar days to the Contractor any updated court disposition regarding any disqualifying offense, regardless of adjudication (e.g., adjudication withheld, a plea of guilty or nolo contendere, or a guilty verdict). The Contractor shall immediately reassess whether to disallow that Person Access to any State of Florida premises or from directly performing services under the Contract. Additionally, the Contractor shall require that the Person complete an annual certification that they have not received any additional criminal misdemeanor or felony record regardless of adjudication (adjudication withheld, a plea of guilty or nolo contendere, or a guilty verdict) for the Disqualifying Offenses and shall maintain that certification in the employment file.

In addition, the Contractor shall ensure that all Persons have a responsibility to self-report to the Contractor within three (3) calendar days, any arrest for any Disqualifying Offense. The Contractor shall notify the Department's Contract Manager within twenty-four (24) hours of all details concerning any reported arrest.

### **13.3 Department's Ability to Audit Screening Compliance and Inspect Locations**

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

## **SECTION 14. COMMUNICATIONS AND CONFIDENTIALITY**

### **14.1 Public Statements**

The Contractor shall not, without first notifying the Department's Contract Manager and securing the Department's prior written consent, make public statements or publicly disseminate any information which concern the Contract or its subject matter, including, but not limited to:

1. disclose or permit disclosure of any data or information obtained or furnished in accordance with the Contract,
2. use any statement attributable to the Department or its employees,
3. mentioning the Contract in a press release or other promotional material, or
4. otherwise linking Contractor's name and either a description of the Contract or the name of the State, the Department or any Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

Public statements include press releases, publicity releases, promotions, marketing materials, corporate communications, or other similar communications. If provided, the Department's written consent shall not be construed to supersede or waive the Contract requirements imposed on the Contractor to maintain confidential information.

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

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

The Contractor shall have the following obligations with respect to the marketing of this Contract to any Customers:

1. To use its commercially reasonable best efforts to further the promotion, advertising, and marketing of services available under this Contract; and
2. To promote the utilization of this Contract to Other Eligible Users in favor of any other cooperative purchasing contract for similar services.

#### **14.2 Confidential Information**

The Contractor must maintain confidentiality of all confidential data, files, and records related to the services and commodities provided pursuant to the Contract and must comply with all state and federal laws, including, but not limited to Chapter 119, F.S., and sections 381.004, 384.29, 392.65, and 456.057, F.S. The Contractor's confidentiality procedures must be consistent with the most recent version of the Department security policies, protocols, and procedures. The Contractor must also comply with any applicable professional standards with respect to confidentiality of information.

### **SECTION 15. LICENSING**

All services shall include all required licenses for Customers to utilize the services at no additional cost to the Customer. All third-party license costs for Contractor-provided hardware and software shall be the responsibility of the Contractor. The Contract will take precedence over any and all End User License Agreement conflicting terms. Any provisions in an End User License Agreement that require the Department to indemnify the Contractor are inapplicable.

Additional terms affixed to products or services prior to delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, service agreements, end user agreements, "clickwrap" agreements, "shrink wrap", "browserwrap", or terms accompanying or affixed to a product or service, whether written or electronic) incorporated onto the Contractor's or subcontractor's order or fiscal forms or other documents forwarded by the Contractor for payment will not be binding on the Department or Customer unless negotiated and agreed to in writing as specified in this section. A Customer may agree to additional terms and conditions specific to the Customer's order that are jointly negotiated and explicitly agreed upon by the Customer. A Customer's acceptance of a product or service or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute an acceptance of the Contractor's or subcontractor's proposed modification to terms and conditions or an agreement to modify or

add additional terms to this Contract. Should a court determine any provision of the Contract is invalid, the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Contract did not contain the provision held invalid.

## **SECTION 16. PERFORMANCE BOND**

Within thirty (30) days of Contract execution, Contractor will deliver to the Department's Contract Manager a performance bond in the amount of \$500,000 (five hundred thousand). This shall also apply to any renewal years. The bond shall name the Department as the beneficiary and will be used to guarantee satisfactory performance by the Contractor throughout the term of the Contract.

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

## **SECTION 17. CUSTOMER OF RECORD**

The Department is considered the Customer of Record for all services for the purposes of the Federal Communications Commission and Customer Proprietary Network Information.

## **SECTION 18. SPECIFIC APPROPRIATION**

The following is the specific State fund from which the State will make payment under the first year of the Contract:

General Appropriations Act (Florida Law)  
2909 SPECIAL CATEGORIES  
CENTREX AND SUNCOM PAYMENTS FROM COMMUNICATIONS WORKING  
CAPITAL TRUST FUND

## **SECTION 19. MISCELLANEOUS**

### **19.1 Warranty of Contractor's Ability to Perform**

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

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

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

### **19.2 Subcontractors, Affiliates, Partners, Teammates, Third-Party Vendors**

The Contractor is fully responsible for satisfactory completion of all subcontracted work, including work by affiliates, partners, teammates, and all other third-party vendors, in accordance with the terms and conditions of the Contract.

### **19.3 Assignment**

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

### **19.4 Independent Contractor**

The Contractor is an independent contractor. The Contractor and its employees, agents, representatives, and subcontractors, affiliates, partners, teammates, and all other third-party vendors are not employees or agents of the Department and are not entitled to the benefits of State of Florida employees. The Department will not be bound by any acts or



conduct of the Contractor or its employees, agents, representatives, or subcontractors, affiliates, partners, teammates, and all other third-party vendors.

**19.5 Risk of Loss**

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

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

**19.6 Safety Standards**

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

**19.7 Ombudsman**

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

**19.8 Time is of the Essence**

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

**19.9 Waiver**

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

**19.10 Modification and Severability**

With the exception of the process described in Section 5.2, Change Requests, this Contract may only be modified by a written agreement signed by the Department and the Contractor.

Should a court determine any provision of the Contract is invalid, the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Contract did not contain the provision held invalid.