

## ATTACHMENT B - FLORIDA DEPARTMENT OF STATE CONTRACT (MODEL)

**THIS CONTRACT** (“Contract”), by and between the State of Florida, Department of State, hereinafter referred to as “DOS” or “Department,” and \_\_\_\_\_, hereinafter referred to as “Contractor.” DOS and Contractor are sometimes referred to herein individually as a “Party” and collectively “the Parties.”

### WITNESSETH THAT:

**WHEREAS**, DOS issued Invitation to Negotiate Sunbiz COTS Business Registry - DOS ITN 10/17-12 (Rebid) and the Contractor submitted a response to the Invitation to Negotiate; and

**WHEREAS**, Contractor desires to enter into a Contract with DOS to provide certain products and services; and

**WHEREAS**, DOS desires to enter into a Contract with Contractor in order to acquire certain Contractor supplied products and services;

**NOW THEREFORE**, Contractor and DOS for and in recognition of considerations hereinafter set forth, do hereby agree as follows:

### SECTION 1. DEFINITIONS

The definitions in Chapter 287, Florida Statutes, (F.S.) and Rule Chapter 60A-1, Florida, PUR 1000, and Attachment C of the ITN.

Administrative Code (F.A.C.) will apply to the contract.

### SECTION 2. CONTRACT TERM AND TERMINATION

#### 2.1 Initial Term

The term will begin July 1, 2019 and conclude June 30, 2025, with the first year of the term being for the configuration and deployment of the *Sunbiz* instance of the commercial off-the-shelf (COTS) business registry solution and the remaining five (5) years being for support, hosting, and maintenance.

Pursuant to Chapter 2018-9, Laws of Florida, the Department, having released a competitive procurement and if sufficient appropriations are available to fund the contract, may execute a contract for the replacement of its business and commercial registry system.

#### 2.2 Renewal

The resulting contract may be eligible for renewal for one (1) additional five (5) year period of support, hosting, and maintenance, at the Department’s sole option.

Pursuant to 287.057(13), F.S., renewal of a contract for commodities or contractual services must be in writing and is subject to the same terms and conditions set forth in the initial contract and any written amendments signed by the parties. If the commodity or contractual service is purchased as a result of the solicitation of bids, proposals, or replies, the price of the commodity or contractual service to be renewed must be specified in the bid, proposal, or reply, except that an agency may negotiate lower pricing. A renewal contract may not include any compensation for costs associated with the renewal. Renewals are contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds.

#### 2.3 Suspension of Work and Termination.

#### 2.3.1 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 suspend a purchase order, at any time, when in the best interest of the Department to do so. The Department will provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor must comply with the notice and will cease the activities associated with any active or new purchase orders. Within ninety (90) calendar 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 or purchase order. Suspension of work will not entitle the Contractor to any additional compensation.

#### 2.3.2 Termination for Convenience.

The Contract may be terminated by the Department in whole or in part at any time, in the best interest of the State of Florida. If the Contract is terminated before performance is completed, the Contractor will be paid only for that work satisfactorily performed 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 Department and will be turned over promptly by the Contractor.

#### 2.3.3. Termination for Cause.

If the Department determines that the performance of the Contractor is not satisfactory, the Department, at its sole discretion, may: (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.

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

#### 3.1 Pricing.

The Contractor will not exceed the pricing set forth in the Contract Documents, Contractor's Response to the ITN, and the BAFO submitted by the Contractor upon which the award was based.

#### 3.2 Price Decreases.

The following price decrease terms will apply to the Contract:

- (a) Preferred Pricing. Consistent with the goals of section 216.0113, F.S., Contractor acknowledges and recognizes that the Department wants to take advantage of any improvements in pricing over the course of the Contract period. To that end, the pricing indicated in this Contract is a maximum guarantee under the terms of this clause. Contractor's pricing will not exceed, on an aggregate basis, the pricing offered under comparable contracts for public entities. Comparable contracts are those which are similar in size, scope and terms.

- 3.3 **Payment Invoicing**  
The Contractor will be paid upon submission of invoices to the Department after delivery and acceptance of commodities or contractual services is confirmed by the Department. Invoices must contain detail sufficient for an audit and contain the Contract Number and the Contractor's Federal Employer Identification Number.
- 3.4 **Purchase Order**  
The Department may use purchase orders to buy commodities or contractual services pursuant to the Contract. If applicable, the Contractor must provide commodities or contractual services pursuant to purchase orders. The purchase order period of performance survives the expiration of the Contract. The duration of purchase orders must not exceed the expiration of the Contract by more than twelve (12) months.
- 3.5 **Travel**  
Travel expenses are not reimbursable unless specifically authorized by the Department in writing, and may be reimbursed only in accordance with section 112.061, F.S.
- 3.6 **Final Invoice**  
Unless renewed or extended, the deliverables of the Statement of Work must be completed by the due dates as agreed to between the Department and the Contractor. The final invoice for deliverables due within each state fiscal year of the contract and the last year of the contract must be submitted within 45 days of the end of the fiscal year.
- 3.7 **Appropriations**  
The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.
- 3.8 **MyFloridaMarketPlace Transaction Fee**  
The Contractor will be required to pay the required MFMP transaction fee(s) as specified in **SECTION 14** of the **PUR 1000**, unless an exemption has been requested and approved prior to the award of the contract pursuant to Rule 60A-1.031, F.A.C.
- 3.9 **Taxes**  
Taxes, customs, and tariffs on commodities or contractual services purchased under the Contract will not be assessed unless preapproved by the State of Florida.
- 3.10 **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. 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 of the overpayment.

#### **SECTION 4. CONTRACT COMPOSITION AND MANAGEMENT**

- 4.1 **Composition and Priority**  
The Contractor agrees to provide commodities or contractual services to the Department within the manner and at the location specified in the Contract and any attachments to the Contract. The Contract will consist of this executed Contract Document, Attachment A – STATEMENT OF WORK, the ITN, and any Addenda to the ITN, and the BAFO submitted by the Contractor upon which the award was based and the Contractor's Response to the solicitation. Additionally, the

terms of the Contract supersede the terms of any and all prior agreements between the Parties.

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

This Contract Document

Attachment A – Statement of Work, as approved by the Department and Contractor

Price Sheet(s), as revised by the BAFO, or, if no BAFO, the final Response

Addenda to the ITN

The ITN

PUR 1000

Contractor's Response to solicitation

#### 4.2 Notices

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

#### 4.3 Department's Contract Manager

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

Scott Maynor  
Florida Department of State 500 S. Bronough Street  
Tallahassee, Florida 32399  
Telephone: 850-245-6135  
Email: Scott.Maynor@dos.myflorida.com

In the event that the Department changes the Contract Manager, the Department will notify the Contractor. Such a change does not require an 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 provided in a separate writing to the Department upon Contract signing in the following format:

<Insert Contractor's Contract Manager's Name>  
<Insert Contractor name>  
<Insert Contractor's physical address> Telephone: (XXX) XXX-XXXX  
Email: <Insert Contractor's Contract Manager's email>

In the event that the Contractor changes its Contract Manager, the Contractor will notify the Department. Such a change does not require an amendment to the Contract.

4.5 Department Contract Administrator

The Contract Administrator whose responsibilities will be to maintain this Contract is as follows:

Florida Department of State 500 S. Bronough Street  
Tallahassee, Florida 32399  
Telephone:850-245-6581  
Email:purchasing@dos.myflorida.com

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

4.6 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 Department.

4.7 RESPECT

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

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

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

4.8 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 5. COMPLIANCE WITH LAWS**

### **5.1 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. For example, the Contractor must comply with section 274A of the Immigration and Nationality Act, the Americans with Disabilities Act, Health Insurance Portability and Accountability Act (HIPAA), if applicable, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status.

Pursuant to subsection 287.058(1), F.S., the provisions of subparagraphs 287.058(1)(a)- (c), and (g), F.S., are hereby incorporated by reference, to the extent applicable.

### **5.2 Governing Laws and Venue**

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 Customer

### **5.3 Department of State Registration**

The Contractor and any subcontractors that assert corporate status must provide the Customer with conclusive evidence, per Chapters 605 through 623, F.S., 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.

### **5.4 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 Customer 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.

### **5.5 Contractor Certification.**

If the Contract exceeds \$1,000,000.00 in total, not including renewal years, Contractor certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List created pursuant to sections 215.473, F.S. and 215.4725 F.S, respectively. Pursuant to section 287.135(5), F.S., and 287.135(3), F.S., Contractor agrees the Customer may immediately terminate the Contract for cause if the Contractor is found to have submitted a false certification or if Contractor is placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy

Sector List, or the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel during the term of the Contract or the State. DOS agrees to notify Contractor in writing at the earliest possible time if funds are not appropriated or available. The cost for services rendered under any other Contract or to be paid from any other source is not eligible for reimbursement under this Contract.

5.6 Cooperation with Inspector General and Records Retention

Pursuant to subsection 20.055(5), F.S., Contractor, and any subcontractor to the Contractor, understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Contractor must provide any information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but will not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor will retain such records for five years after the expiration of the Contract, or the period required by the General Records Schedules maintained by the Florida Customer of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>), whichever is longer. The Contractor agrees to reimburse the State of Florida for the reasonable costs of investigation incurred by the Inspector General or other authorized State of Florida official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State of Florida which results in the suspension or debarment of the Contractor. Such costs will include, but will not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees.

5.7 Inspection

Section 215.422, F.S., provides that agencies have five (5) working days, unless the contract specifies otherwise, to inspect and approve commodities or contractual services. Items may be tested for compliance with specifications. Items delivered not conforming to specifications may be rejected and returned at the Contractor's expense. Interest penalties for late payment are also limited according to section 215.422, F.S.

5.8 American with Disabilities Act (ADA) Civil Rights Compliance

Contractor represents and warrants that it will comply with all Equal Accessibility laws, regulations and standards under Sections 251 & 255 of the Telecommunications Act of 1996, Titles I, II, III & IV of the Americans with Disabilities Act (ADA) [42 USC 12101 et seq.], and Sections 504 and 508 of the Federal Rehabilitation Act amendments [29 USC 794 et seq.], and the Assistive Technology Act of 1998. These standards establish a minimum level of accessibility. Contractor will indemnify the customer against any litigation stemming from a lack of compliance with the above laws, regulations and standards.

## SECTION 6. MISCELLANEOUS

6.1 Notice of Legal Actions

The Contractor must notify the Customer of any legal actions that the Contractor has filed against it for a violation of any laws, rules, codes, ordinances or licensing requirements within thirty (30) calendar days of the action being filed. The Contractor must notify the Customer of any legal actions filed against it for a breach of a contract of similar size and scope to this Contract within thirty (30) calendar days of the action being filed. Failure to notify the Customer of a legal action within thirty (30) calendar days of the action will be grounds for termination for cause of the Contract.

6.2 Subcontractors

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

6.3 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 Customer. In the event of any assignment, the Contractor remains secondarily liable for performance of the Contract, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written notice to the Contractor.

6.4 Independent Contractor

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

6.5 Risk of Loss

Matters of inspection and acceptance 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 rejects a commodity, Contractor will remove the commodity from the premises within ten (10) calendar days after notification of rejection, and the risk of loss will remain with the Contractor.

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

6.6 Safety Standards

All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State of Florida inspector. Acceptability customarily requires, at a minimum, an identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished must meet all applicable requirements of the Occupational Safety and Health Act and State of Florida and federal requirements relating to clean air and water.

6.7 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.

- 6.8 **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.
- 6.9 **Waiver**  
The delay or failure by the Customer to exercise or enforce any rights under the Contract will not constitute waiver of such rights.
- 6.10 **Modification and Severability**  
The Contract may only be modified by written agreement between the Customer 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.
- 6.11 **Information Technology Standards**  
Pursuant to sections 282.0051 and 282.318, F.S., the Agency for State Technology (AST) is to establish standards for the implementation and management of information technology resources. Vendors agree to cooperate with the agency in furtherance of its efforts to comply with AST standards, established in Rule Chapter 74, F.A.C., as applicable.
- 6.12 **Dispute Resolution**  
Any dispute concerning performance of the Contract shall be decided by the DOS's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty-one (21) days from the date of receipt, the Contractor files with DOS a petition for administrative hearing. The Department's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.
- 6.13 **The Department is Self-Insured**  
The Department is self-insured for its torts to the extent provided in section 768.28, Florida Statutes, to cover bodily injury, death and property damage arising as a consequence of the acts and omissions to act of its officers, employees, and agents. The Department is without authority to insure the contractor in any way. The Department shall not be deemed to assume any liability for the acts, omissions to act and negligence of the Contractor, its agents, servants and employees; nor shall the Contractor exclude liability for its own negligence to the Department or any third party, except as allowed by law and agreed to by the Department. The Department is without authority to indemnify or hold harmless the Contractor. Unless authorized by law and agreed to in writing, the Department shall not be liable to pay attorney fees, interest, late charges and service fees and/or costs of collection.
- 6.14 **Survival**  
The provisions of all confidentiality obligations, indemnification, limitation of liability and any other sections, schedules or attachments to this Contract that by their nature may reasonably be presumed to survive any termination or expiration of this Contract, will so survive.

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

7.1 Workers' Compensation Insurance

To the extent required by law, the Contractor must be self-insured against, or must secure and maintain during the life of the contract, Worker's Compensation Insurance for all its employees connected with the work of this project, and in case any work is subcontracted, the Contractor must require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees engaged in work under the resulting contract are covered by the Contractor's insurance program. Self-insurance or insurance coverage must comply with the Florida Worker's Compensation law. In the event hazardous work is being performed by the Contractor under the resulting contract and any class of employees performing the hazardous work is not protected under Worker's Compensation statutes, the Contractor must provide, and cause each subcontractor to provide adequate insurance satisfactory to the Customer for the protection of employees not otherwise protected.

7.2 General Liability Insurance

The Contractor must secure and maintain Commercial General Liability Insurance, including bodily injury, property damage, products, personal & advertising injury and completed operations. This insurance must provide coverage for all claims that may arise from the services and/or operations completed under the Contract, whether such services or operations are by the Contractor or anyone directly or indirectly employed by them. Such insurance must include a Hold Harmless Agreement in favor of the State of Florida and also include the State of Florida as an additional named insured for the entire length of the resulting contract. The Contractor is responsible for determining the minimum limits of liability necessary to provide reasonable financial protections to the Contractor and the State of Florida under the resulting contract.

All insurance policies must be with insurers licensed or eligible to transact business in the State of Florida. The Contractor's current certificate of insurance must contain a provision that the insurance must not be canceled for any reason except after thirty (30) calendar days written notice to the Customer's Contract Manager.

The Contractors must submit insurance certificates evidencing such insurance coverage prior to execution of a contract with the Customer.

The Contractor must require its insurance carrier to add the Department to the insurance policies as an additional named insured.

7.3 Indemnification

To the extent permitted by Florida law, the Contractor agrees to indemnify, defend, and hold the Customer 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 Customer. The Contract does not constitute a waiver of sovereign immunity or consent by the Customer or the State of Florida or its subdivisions to suit by third parties. Without limiting this indemnification, the 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**

The Customer may unilaterally cancel this Contract for refusal by the Contractor to comply with this section by not allowing public access to all documents, papers, letters or other material made or received by the Contractor in conjunction with the Contract, unless the records are exempt from section 24(a) of Article I of the State Constitution and section 119.07(1), F.S., or applicable state or federal law.

Solely for the purposes of this section the Contract Manager is the agency custodian of public records.

**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 DOS CUSTODIAN OF PUBLIC RECORDS, CARLOS REY, AT 850-245-6515, CARLOS.REY@DOS.MYFLORIDA.COM, PUBLIC RECORDS CUSTODIAN, FL DOS, 500 S. BRONOUGH STREET, TALLAHASSEE, FL 32399-0250.**

If, under a resulting contract or purchase order, the Contractor is providing services and is acting on behalf of a public agency, as provided by section 119.0701, F.S. The Contractor shall:

- (a) Keep and maintain public records required by the public agency to perform the service;
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within reasonable time and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law;
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the contract term and following the completion of the Contract if the contractor does not transfer the records to the public agency;
- (d) Upon completion of the Contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

### **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 812.081 or 688.002, F.S., or otherwise confidential under Florida or federal law, the Contractor

must clearly designate that portion of the materials as “confidential” when submitted to the Customer. If the Customer receives a public records request for contract-related materials designated by the Contractor as “confidential,” the Customer will provide only the portions of the contract-related materials not designated as “confidential.” If the requester asserts a right to examine contract-related materials designated as “confidential,” the Customer will notify the Contractor. The Contractor will be responsible for responding to and resolving all claims for access to contract-related materials it has designated “confidential.”

If the Customer is served with a request for discovery of contract-related materials designated “confidential,” the Customer will promptly notify the Contractor about the request. The Contractor will be responsible for filing the appropriate motion or objection in response to the request for discovery. The Customer will provide materials designated “confidential” if the Contractor fails to take appropriate and timely action to protect the materials designated as “confidential” from disclosure.

The Contractor will protect, defend, and indemnify the Customer for claims, costs, fines, and attorney’s fees arising from or relating to its designation of contract-related materials as “confidential.”

All DOS data and images which may be provided to the Contractor by DOS will remain the exclusive property of DOS and may not be copied or removed by Contractor personnel without the express written permission of DOS.

Contractor is responsible for the actions of its agents and subcontractors with respect to protection of confidential law enforcement and other types of confidential data. Contractor is expressly prohibited from transferring DOS data, by any means and in any medium or format, outside of North America or to a third-party in performing the work defined in this Contract. Contractor personnel assigned to this project must sign a Non-Disclosure Agreement, which will be provided by DOS, and all Contractor employees assigned to this project shall be appropriately screened in a manner comparable to section 435.04, Florida Statutes, with no disqualifying offenses. If any screened Contractor employee has a disqualifying offense, the Contractor shall provide a new employee for screening to replace the disqualified employee. Contractor personnel must be approved by DOS, as stated above, prior to beginning work on the project or gaining access to any DOS data/network systems.

### 8.3 Document Management

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

Intellectual property rights will be governed by the Statement of Work. This provision will survive the termination or expiration of this Contract.

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

### 9.1 Duty to Provide Secure Data

The Contractor will maintain the security of State of Florida Data including, but not limited to, a secure area around any display of such Data or Data that is otherwise visible. The Contractor will also comply with all HIPAA requirements and any other state and federal rules and regulations

regarding security of information.

## 9.2 Warranty of Security

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

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

Notwithstanding any provision of this Contract to the contrary, the Contractor must notify the Customer as soon as possible, in accordance with the requirements of section 501.171, F.S., if applicable, and in all events within one (1) business day in the event Contractor discovers any Data is breached, any unauthorized access of Data occurs (even by persons or companies with authorized access for other purposes), any unauthorized transmission of Data or any credible allegation or suspicion of a material violation of the above. This notification is required whether the event affects one agency/customer or the entire population. The notification must be clear and conspicuous and include a description of the following:

- (a) The incident in general terms.
- (b) The type of information that was subject to the unauthorized access and acquisition.
- (c) The type and number of entities who were, or potentially have been affected by the breach.
- (d) The actions taken by the Contractor to protect the Data from further unauthorized access. However, the description of those actions in the written notice may be general so as not to further increase the risk or severity of the breach.

## 9.3 Remedial Measures

Upon becoming aware of an alleged security breach, Contractor's Contract Manager must set up a conference call with the Customer'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 Customer personnel to be available for the call. If the designated time is not practical for the Customer, an alternate time for the call will be scheduled. All available information must be shared on the call. The Contractor must answer all questions based on the information known at that time and answer additional questions as additional information becomes known. The Contractor must provide the Customer with final documentation of the incident including all actions that took place. If the Contractor becomes aware of a security breach or security incident outside of normal business hours, the Contractor must notify the Customer's Contract Manager and in all events, within one business day.

- 9.4 **Indemnification (Breach of Warranty of Security)**  
The Contractor agrees to defend, indemnify and hold harmless the Customer and the State of Florida, its officers, directors and employees for any claims, suits or proceedings related to a breach of the Warranty of Security. The Contractor will include credit monitoring services at its own cost for those individuals affected or potentially affected by a breach of this warranty for a two-year period of time following the breach.
- 9.5 **Annual Certification**  
The Contractor is required to submit an annual certification demonstrating compliance with the Warranty of Security to the Customer by December 31st of each Contract year.

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

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

## **SECTION 11. CONTRACT MONITORING**

- 11.1 **Performance Standards**  
The Contractor agrees to perform all tasks and provide deliverables as set forth in the Statement of Work, and the executed Contract. 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.
- 11.2 **Performance Deficiency**  
In addition to the processes set forth in the Contract, if the Customer determines that the performance of the Contractor is unsatisfactory, the Customer may notify the Contractor of the deficiency to be corrected, which correction must be made within a time-frame specified by the Customer. The Contractor must provide the Customer with a corrective action plan describing how the Contractor will address all issues of contract non-performance, unacceptable performance, and failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance.
- 11.3 **Financial Consequences of Non-Performance**  
If the corrective action plan is unacceptable to the Customer, or fails to remedy the performance deficiencies, the Contractor will be assessed a non-performance retainage as indicted in the Statement of Work. The retainage will be applied to the invoice for the then-current billing period.
- 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 Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) calendar 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) calendar 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 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 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 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 Customer may conduct or have conducted performance and/or compliance audits of the Contractor and subcontractors as determined by the Customer. The Customer 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 fees and claims for payment under the Contract, the Contractor's agreements or contracts with subcontractors, partners or agents of the Contractor, pertaining to this Contract, may be inspected by the Customer upon fifteen (15) calendar 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 Customer or its designee to conduct compliance and performance audits on any of the Contractor's contracts relating to this 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 section 8.3 of these General Contract Conditions. 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 Customer, State of Florida's Chief Financial Officer or the Office of the Auditor General for audit.

## **SECTION 13. GEOGRAPHIC LOCATION OF DATA AND SERVICES**

13.1 Services and Data

The State of Florida requires that all Data generated, used, or stored by the Contractor pursuant to the Contract will reside and remain in the United States and will not be transferred outside of the United States.

13.2 E-Verify

In accordance with Executive Order 11-116, the Contractor agrees to utilize the U.S. Customer of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of the Contract for the services specified in the Contract. The Contractor must also include a requirement in subcontracts that the subcontractor must utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term. In order to implement this provision, the Contractor must provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five (5) calendar days of Contract execution. If the Contractor is not enrolled in DHS E-Verify System, it will do so within five (5) calendar days of notice of Contract award, and provide the Contract Manager a copy of its MOU within five (5) calendar days of Contract execution. The link to E-Verify is provided below. <http://www.uscis.gov/e-verify>. Upon each Contractor or subcontractor new hire, the Contractor must provide a statement within five (5) calendar days to the Contract Manager identifying the new hire with its E-Verify case number.

13.3 Communications and Confidentiality

The Contractor agrees that it will make no statements, press releases, or publicity releases concerning the Contract or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with the Contract, or any particulars thereof, during the period of the Contract, without first notifying the Customer's Contract Manager and securing prior written consent. The Contractor must maintain confidentiality of all confidential data, files, and records related to the services and/or commodities provided pursuant to the Contract and must comply with all state and federal laws, including, but not limited to sections 381.004, 384.29, 392.65, and 456.057, F.S. The Contractor's confidentiality procedures must be consistent with the most recent version of the Customer security policies, protocols, and procedures. The Contractor must also comply with any applicable professional standards with respect to confidentiality of information.

**SECTION 14. BACKGROUND SCREENING, RECORDS RETENTION, AND WARRANTY OF SECURITY**

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

14.1 Background Screening

The Contractor, Contractor's employees, and/or any subcontractors shall have an FDLE (Florida Department of Law Enforcement) Level II background check to include, at a minimum, a fingerprint-based computerized criminal history check performed on each individual working on the State account. The Contractor may access the FDLE site themselves to perform this check online. The Contractor is responsible for payment. The address for the site is: <http://www.fdle.state.fl.us/CriminalHistory>. If the individual has not been a resident in Florida for twelve (12) months, then a check should be done from the individual's previous residence. A copy of the background check must be provided to the Contract Manager for review, which will be forwarded to the Department of State's Inspector General's Office for approval before any Personnel will be allowed to work under the Contract. The Department reserves the right to reject any proposed Personnel based on background check information.

In addition to any background screening required by the Contractor as a condition of employment, the Contractor warrants that it will conduct a criminal background screening of, or



ensure that such a screening is conducted for, each of its employees, subcontractor personnel, independent contractors, leased employees, volunteers, licensees or other person, hereinafter referred to as "Person" or "Persons," operating under their direction who directly perform services under the Contract, whether or not the Person has access to State of Florida Data, as well as those who have access, including indirect access, to State of Florida Data, whether or not they perform services under the Contract. The Contractor warrants that all Persons will have passed the Background Screening described herein before they have Access to Data or begin performing services under the contract.

As used in Section 14, "Access" means to review, inspect, approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any data, regardless of type, form, or nature of storage. Access to a computer system or network includes local and remote access.

As used in sections 9, 13, 14, and 16, "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions, that is exempt or confidential under Florida or federal law, or protected health information as defined in 45 C.F.R. § 160.103. Data may be in any form, including but not limited to, storage media, computer memory, in transit, presented on a display device, or in physical media such as paper, film, microfilm, or microfiche. Data includes the original form of the Data and all metadata associated with the Data.

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

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

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

#### 14.1.1 Disqualifying Offenses

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

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

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

14.1.2 Refresh Screening

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

14.1.3 Annual Certification

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

14.1.4 Self-Disclosure

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

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

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

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

14.2 Record Retention

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

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

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

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

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

Failure to compile, retain, and disclose the written policy and information as required in this subsection shall be considered a breach of the Contract. The resulting damages to the Department from a breach of this subsection are by their nature impossible to ascertain presently and will be difficult to ascertain in the future. The issues involved in determining such damages will be numerous, complex, and unreasonably burdensome to prove. The parties acknowledge that these financial consequences are liquidated damages, exclusive of any other right to damages, not intended to be a penalty and solely intended to compensate for unknown and unascertainable damages. The Contractor therefore agrees to credit the Department the sum of \$5,000.00 for each breach of this subsection.

#### 14.3 Indemnification

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

### **SECTION 15. PERFORMANCE BOND**

For each year of the Contract, the Department will require the Contractor to furnish a performance bond or other form of security. For the first year, the amount of one hundred percent (100%) of year one's implementation cost will be required. For all subsequent years, a bond or security in the amount of twenty percent (20%) of performance cost for years 2 – 5, hosting and maintenance will be required.

### **SECTION 16. NO OFFSHORING OF DATA**

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

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

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

- (a) The incident in general terms.
- (b) The type of personal information that was subject to the unauthorized access and acquisition.
- (c) The number of individuals who were, or potentially have been affected by the breach.
- (d) The actions taken by the Contractor to protect the Data information from further unauthorized access. However, the description of those actions in the written notice may be general so as not to further increase the risk or severity of the breach.

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

CONTRACTOR	FLORIDA DEPARTMENT OF STATE
Signature	Signature
Title	Title:

Date	Date