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**Ron DeSantis, Governor**

**CONTRACT**  
**FOR**  
**MOBILE COMMUNICATION SERVICES**  
**CONTRACT NO: DMS-19/20-006C**  
**BETWEEN**  
**THE STATE OF FLORIDA**  
**DEPARTMENT OF MANAGEMENT SERVICES**  
**AND**  
**CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS**

# CONTRACT

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## Exhibits:

Attachment A – Definitions and Acronyms

Attachment B – Final Statement of Work

Attachment C – Final Service Level Agreements;

Attachment D – Contractor's Pricing, including:

Exhibit 1 to Attachment D – Vendor's Services and Discounts Pricing

Exhibit 2 to Attachment D – Vendor's Device List

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

Attachment 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 Cellco Partnership d/b/a Verizon Wireless (Contractor) with offices at 4075 Esplanade Way, Suite 226, Tallahassee, FL 32399, each a "Party" and collectively referred to herein as the "Parties." The terms "Party" and "Parties" are defined as provided in this paragraph whether capitalized or not, unless stated otherwise.

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, as defined in Attachment A, Definitions and Acronyms, to do so. The Department 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. Notwithstanding the foregoing, the suspension of wireless services under the Contract is limited to two (2) ninety (90) day periods (a total of 180 days) per twelve (12) month period. 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 for convenience. If the Department fails to provide notice in accordance with this section, suspended lines will be automatically restored to active billing status on the 91<sup>st</sup> day following each suspension period. Suspension of work will not entitle the Contractor to any additional compensation. However, the Customer will remain responsible to compensate Contractor for services ordered and delivered under the terms of this Contract through the date of termination. For the avoidance of doubt, the Contractor will not be compensated for any suspended services during the time of suspension.

**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. The Department shall provide Contractor thirty (30) days' advanced written notice of such termination. 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) terminate the Contract pursuant to Rule 60A-1.006, F.A.C, by notifying the Contractor of the deficiency with a requirement that the deficiency be corrected within a specified timeframe, which shall generally not be less than thirty (30) days from such notice, or (b) 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
4. Attachment C – Final Service Level Agreements;
5. Attachment D – Contractor's Pricing, which consists of:
  - a. Exhibit 1 – Vendor's Services and Discounts Pricing (i.e., End-User Price List)
  - b. Exhibit 2 – Vendor's Device List
6. Attachment E – Instructional Document for Request for 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 Competitive Pricing**

The Parties agree to review on an annual basis the competitiveness of the prices stated in the Contractor's most recent EUPL for services, features and devices by comparing the combined pricing for all services, features and devices provided under this Contract to the combined pricing charged by Contractor to any similarly situated United States State government customer for a mix of services, features and devices substantially similar in scope and volume to those provided under this Contract, taking into account the particular characteristics of both contracts such as performance standards, pricing terms, and contract terms and conditions. If after review the Parties determine that such similarly situated customer of the Contractor is receiving services, features and devices from the Contractor at a combined price below the pricing on the Contractor's current EUPL, the Contractor shall submit an updated EUPL with revised lower pricing; except that Contractor will have no obligation to amend pricing to the extent that the combined price difference results from services, features and devices provided by third parties, unless and to the extent that Contractor can obtain reduced pricing from such third parties using reasonable efforts. In connection with the review described in this Section 3.2.2, Contractor has no obligation to provide DMS with Contractor's or its subcontractors' or suppliers' trade secrets or confidential information not otherwise required to be provided under this Contract.

#### **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 provided the Customer meets all qualifications of the promotion. Contractor must submit documentation to the Customer and to the Department identifying the proposed (1) starting and ending dates of the promotion, (2) commodities or contractual services involved, and (3) promotional 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. Requested terms and conditions may be added to the PO, subject to negotiation between the Customer and Contractor.

### **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 electronic invoices should 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.

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 without prior receipt of a written notice of nonpayment, three (3) contact attempts, and a minimum sixty-one (61) day period after payment due date for State agency Customers to cure a payment default.

### **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 or Federal law. The Contractor is authorized to collect government-imposed taxes, surcharges, and fees.

### **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 two (2) billing cycles after either discovery by the Contractor, its independent auditor, or notification by the Department or Customer of the overpayment.

## **SECTION 4. CONTRACT ADMINISTRATION**

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

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

Caitlen Boles  
Departmental Purchasing  
Department of Management Services  
4050 Esplanade Way, Tallahassee, FL 32399  
Telephone: (850) 410-1423  
Email: Caitlen.Boles@dms.fl.gov

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:

Jonathan Rakestraw  
Division of Telecommunications  
Department of Management Services  
4030 Esplanade Way, Tallahassee, FL 32399  
Telephone: (850) 921-0857  
Email: [jonathan.rakestraw@dms.fl.gov](mailto:jonathan.rakestraw@dms.fl.gov)

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:

Raghib Quereshe  
Division of Telecommunications  
Department of Management Services  
4030 Esplanade Way, Tallahassee, FL 32399  
Telephone: (850) 413-0319  
Email: [raghib.qureshi@dms.fl.gov](mailto:raghib.qureshi@dms.fl.gov)

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:

Miko Baldwin  
Cellco Partnership d/b/a Verizon Wireless  
10170 Junction Drive, 2<sup>nd</sup> Floor, Annapolis Junction, MD 20701  
Telephone: (240) 280-3563  
Email: [Miko.Baldwin@vzw.com](mailto:Miko.Baldwin@vzw.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:



Tom Madden  
Cellco Partnership d/b/a Verizon Wireless  
4075 Esplanade Way, Suite 275, Tallahassee, FL 32399  
Telephone: (850) 294-5171  
Email: [Tom.Madden@verizonwireless.com](mailto:Tom.Madden@verizonwireless.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 written change request to the Contractor. 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. Equipment List and End User Price List updates must be made in accordance with SOW Section 1.5, End User Price Lists (EUPs) and Vendor's Device List, and do 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 and to the extent applicable as 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 and to the extent applicable as 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,, 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, which is not resolved by mutual agreement of the Parties, will be promptly submitted in writing to the other party in accordance with Contract Section 5.1, Notices. The Parties shall designate individuals

with authority to resolve the dispute, which for the Department, will be the Department's Contract Manager, and such individuals shall work diligently and in good faith to resolve the dispute within sixty (60) days. If the dispute cannot be resolved after sixty (60) days, the dispute 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 within the State of Florida 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 *Odbrecht 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 DMS 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, GENERAL LIABILITY INSURANCE, INDEMNIFICATION, AND LIMITATION OF LIABILITY**

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

The Contractor shall maintain Workers' Compensation insurance in compliance with the statutory requirements of the state(s) of operation, as evidenced by a Certificate of Insurance satisfactory to the Department, for the protection of employees not otherwise protected. The Contractor must require all subcontractors to similarly maintain Workers' Compensation Insurance for all of the latter's employees.

#### **7.2 General Liability Insurance**

At all times during the duration of the Contract, the Contractor, at its sole expense, and its subcontractors, if any, shall carry insurance coverage of such types and with such terms and limits as may be reasonably associated with 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 Certificate(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.

Upon receipt of notice from its insurer(s), the Contractor must submit via email, to the Department's Contract Manager, notice of any cancellation of any required insurance that is not replaced at least thirty (30) calendar days prior to cancellation. In the event of cancellation, 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 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 third-party 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.

However, the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State, the Department, or a Customer, nor shall the foregoing indemnification obligations apply to a Customer's misuse or modification of Contractor's products or a Customer's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order.

If any product is the subject of an infringement suit or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Department and Customer the right to continue using the product or to modify it, in accordance with the Contract terms and conditions, to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer and Department the right to continue using the product, the Contractor shall remove the product and refund the Customer and Department the amounts paid in excess of a reasonable rental for past use. The Department and Customer shall not be liable for any royalties.

The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the Department or State or Customer giving the Contractor: (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense.

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.

### **7.4 Limitation of Liability**

For all claims against the Contractor under any PO, CSA, or contract entered into under this Contract, and regardless of the basis on which the claim is made, the Contractor's liability under such a PO, CSA, or contract for direct damages shall be limited to the greater of \$100,000 or two (2) times the dollar amount of such PO, CSA, or contract.

Unless otherwise specifically enumerated in the Contract, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings.

The limitations of this section do not apply to the Contractor's obligations under section 7.3. Indemnification, and section 9.5, Other Indemnifications and Credit Monitoring, of the Contract.

## **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 third-party 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**

No provision of this Agreement shall be construed as vesting in the Department any control, ownership or rights in any facilities, operations or intellectual property of Contractor.

The Parties agree that this Contract does not contemplate any development work, e.g., of software or any other intellectual property, for or on behalf of Customer that requires additional IP ownership rights to vest in Customer.

In the event the Parties agree that the Contractor will perform custom development work for or on behalf of Customer, which development work warrants the license or assignment of additional IP rights to Customer, the Parties shall enter into a separate agreement setting forth the work to be completed, the fees to be paid, and the rights to be assigned.

# **SECTION 9. DATA SECURITY REQUIREMENTS**

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

The Contractor will implement and maintain best practices for technical and organizational controls to protect the security of State Data, including, but not limited to, keeping a secure area around any displayed or otherwise visible State Data and 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 applicable 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.

Notwithstanding the previous statement, services under this Contract relating to help desk services, system maintenance, and order processing review may be performed outside of the United States. Access to data that is not classified as personal information pursuant to section 501.171, F.S., or data that is not classified as confidential or exempt pursuant to any other Florida or federal law is allowed from outside the United States under this Contract, provided that the access is provided in compliance with Chapter 60GG-2, F.A.C.

Except as provided above, 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 will not store any State Data outside of the United States.

The Contractor shall comply with section 501.171, F.S. The Parties agree that the Contractor shall provide the notifications required by sections 501.171(3) and (4), F.S. on behalf of the Department, in accordance with section 501.171(6)(b), 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 follow and maintain its written security policy. The security policy or a high-level summary of the security policy subject to DMS acceptance is subject to disclosure within thirty-six (36) hours upon written demand by the Department or its designated agents or auditors and are subject to audit and screening. The security policy may be substituted with a high-level summary of the security policy. The high-level summary of the security policy is subject to DMS acceptance.

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

1. To the extent known, 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 provide access to the written policy (or the aforementioned high-level summary) 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 \$5,000 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 while it is within the Contractor's control. 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 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 in writing or by phone, but in all instances no later than one (1) Business Day of confirmation of Security Breach impacting the Services or credible allegation .

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, to the extent known or should have been known, that was subject to the violations of Section 9.1, Duty to Secure State Data, or credible allegation of Security Breach;
3. The type and number of entities and individuals who were, or potentially have been, affected by the incident, to the extent known or should have been known; 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 seventy-two (72) 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 third-party 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 or by a Security Breach caused by the Contractor's negligence or willful misconduct, or violation of this agreement 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 as it relates to orders provided under this Contract. 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) pursuant to Section 1.3.3 of the Contract. 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 in writing. 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) business 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) business 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 the same level of preferential treatment that it would grant to similarly situated government Customers with respect to devices, 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 copies of all the Contractor's and subcontractor's relevant data and records that directly relate to the Contract. The Parties shall agree in writing on the scope of the inquiry, timeframe, location (if an audit is to be conducted), and other terms and conditions before work to satisfy the inquiry is commenced. 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, providing services directly under the Contract, may be inspected by the Department upon fifteen (15) days' written 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 providing services directly under this Contract are not required for the Department or its designee to conduct compliance and performance audits on any of the Contractor's contracts directly 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 related to this Contract, 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.

## **12.3 Document Inspection**

In accordance with section 216.1366, F.S., the Department is authorized to inspect the: (a) financial records, papers, and documents of Contractor that are directly related to the performance of Contract or the expenditure of state funds; and (b) programmatic records, papers, and documents of Contractor which the Department determines are necessary to monitor the performance of Contract or to ensure that the terms of the Contract are being met. Contractor shall provide such records, papers, and documents requested by the Department within ten (10) business days after the request is made.

# **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 have conducted 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 or applicable Contractor system. 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, where six (6) years of historical information is available, 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 where six (6) years of historical information is available 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**

Contractor will ensure that all background screening of key staff 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 key staff 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.

In addition, the Contractor shall ensure that all key staff have a responsibility to self-report to the Contractor within three (3) calendar days, any arrest for any Disqualifying Offense.

### **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 fifteen (15) days prior written notice to the Contractor during the term of the Contract. The parties shall agree in writing on the scope of the inquiry, timeframe, location (if an audit is to be conducted), and other terms and conditions before work to satisfy the inquiry is commenced. The Department will have the right to inspect the Contractor's working area, computer systems, and/or locations to ensure that Access to State Data is secure and that the background screening process is 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 efforts to further the promotion, advertising, and marketing of services available under this Contract; and
2. To use its commercially reasonable efforts to promote the equitable utilization of this Contract to Other Eligible Users to 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 applicable 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 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.

This section does not govern Contractor or third-party software (which includes applications and enhancement software) sold separately, which are not necessary to provide the WDS, WVS, or public safety services under this Contract (as examples device operating software or device firmware).

Any software (which includes applications and enhancement software) licensed separately by the Contractor or its third-party supplier to Customers for use will be governed by the written terms and conditions applicable to such software or application (e.g., End User License Agreements (EULAs)).

When Customers purchase any software (which includes applications and enhancement software) licensed separately, applicable terms and conditions (e.g., EULAs will be provided to Customers and may be provided via URL or click-through at point of sale or upon login to the third-party software application. The Contract will take precedence over any and all EULA's conflicting terms. Any provisions in applicable terms and conditions that require the Department to indemnify the Contractor are inapplicable.



## **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)  
2845 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 is reasonably likely to have a material adverse impact on 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 that is of similar size and scope to this Contract within thirty (30) days of the action being filed, unless such legal action is withdrawn or dismissed within such thirty (30) day period. 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 within five (5) calendar days 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, which shall not be unreasonably withheld.

However, the Contractor may assign its right to receive payment under the Contract without the Department's consent upon written notice to the Department, with documentation supplied to the Department as required.

In the event of any permitted assignment, the Contractor remains secondarily liable for performance of the Contract, unless such responsibility is waived by the Department in writing. 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 at Contractor's expense, it may be returned within thirty (30) days of receipt, and the risk of loss will remain with the Contractor.

For Contractor-installed in-building infrastructure owned by the Contractor (e.g., bidirectional amplifiers, including antennas and power), Contractor will remove the commodity (except for cabling) from the premises within thirty (30) days, after notification of rejection, removal fees may be applicable, and the risk of loss will remain with the Contractor.

For Contractor-installed in-building infrastructure, commodities not removed by the Contractor within thirty (30) days of receipt of notification 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 applicable 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.

**SIGNATURE PAGE IMMEDIATELY FOLLOWS**

**SO AGREED** by the parties' authorized representatives on the dates noted below:

**FLORIDA DEPARTMENT OF MANAGEMENT SERVICES**



**J. Todd Inman, Secretary**

8/24/2021

**Date**

**CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS**

DocuSigned by:  
  
CD86E5219D009460...

**Signature**

Todd Loccisano

VP - Commercial Deal Management (Wireless), Verizon Business Group

**Print Name and Title**

7/27/2021 | 9:59 AM MDT

**Date**



4050 Esplanade Way  
Tallahassee, FL 32399-0950  
850-488-2786

Ron DeSantis, Governor

**Contract No.: DMS-19/20-006C**  
**Attachment A – Definitions and Acronyms**

All personal pronouns used in the Contract, whether used in the masculine, feminine, or gender-neutral, shall include all other genders; the singular shall include the plural; and the plural shall include the singular. The following definitions and acronyms apply to the Contract in addition to the definitions in Chapter 287, Florida Statutes (F.S.), and Rule Chapter 60FF-1, Florida Administrative Code (F.A.C.). In the event of a conflict, the definitions provided in this document will prevail.

|               |  |
|---------------|--|
| Access        | When capitalized, this means review, inspect, transmit, approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any State Data, regardless of type, form, or nature of storage; Access to a computer system or network includes local and remote access.                   |
| Business Days | Monday, Tuesday, Wednesday, Thursday, and Friday, excluding weekends and State paid holidays as set forth in section 110.117, F.S.   |
| Contractor    | The Responsive and Responsible Respondent awarded this Contract pursuant to ITN DMS-19/20-006. This definition supersedes the definition in section 287.012(7), F.S.   |
| CPNI          | Customer Proprietary Network Information. The definition of CPNI is the Title 47 U.S. Code § 222(h) (2019) definition.   |
| CRR           | Cost Recovery Rate. The Department's monthly cost recovery charge applied to Customer invoices.  |
| CSAB          | Communications Service Authorization and Billing system.<br><a href="https://portal.suncom.myflorida.com/start/#/login">https://portal.suncom.myflorida.com/start/#/login</a>  |
| Customers     | The entities that are provided services under this Contract, including State agencies, which are required to use the SUNCOM Network, and other entities authorized to use the SUNCOM Network in accordance with Chapter 282, F.S.  |
| End-user      | The individual that utilizes the device that consumes the resources defined by the monthly plan. The End-user's employer is the Customer.  |
| EUPL          | End User Price List  |
| HA/HR         | Highly-available and Highly-reliable. Systems, services, and implementations designed to eliminate planned downtime and prevent unplanned downtime; methods utilize specific hardware, software, and processes; typically implemented in mission critical services.  |
| IP            | Internet Protocol  |
| IPsec         | An Internet Engineering Task Force standard. Text from RFC 4301 - IPsec creates a boundary, between unprotected and protected interfaces, for a host or a network. Traffic traversing the boundary is subject to the access controls specified by the user or administrator responsible for the IPsec configuration. |

**Contract No.: DMS-19/20-006C**  
**Attachment A – Definitions and Acronyms**

|                  |   |
|------------------|---|
| IPsec Tunnel     | Tunnels are a design technique utilized by telecommunications service providers to manage traffic. IPsec tunnels are used to create closed user groups to enforce segregation of traffic. IPsec tunnels are a specific type of tunnel which provides security services for IP packets through encryption, authentication, and protection against replay.  |
| MFN              | MyFloridaNet  |
| OEU              | Other Eligible Users. The entities provided services under this Contract that are not State agencies and are not required to use the SUNCOM Network but are otherwise authorized to use the SUNCOM Network in accordance with Chapter 282, F.S. These include, but are not limited to, political subdivisions of the State, including counties, municipalities, school districts, and water management districts. Also included are, private nonprofit elementary and secondary schools conditioned upon certain requirements, universities, libraries of community colleges, and nonprofit corporations. |
| Person           | When capitalized in Sections 9 and 13 of the Final Contract, this means the Contractor's employees, subcontractor personnel, independent contractors, leased employees, volunteers, licensees, or other person operating under the Contractor's direction with Access to State Data or who enters either the premises or facilities where State Data is stored or accessible.   |
| Reply            | A formal response to ITN No. DMS-19/20-006.   |
| Respondent       | An entity that submitted a Reply to ITN No. DMS-19/20-006.  |
| SLA              | Service Level Agreement   |
| SLA Clock        | Service Level Agreement Clock. The SLA clock refers to how a deliverable will be measured in terms of time for completion as stated in the particular SLA.  |
| SNMP             | Simple Network Management Protocol  |
| State            | The State of Florida  |
| State Data       | All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by the Contractor in its performance under this Contract.   |
| Subcontractor    | A third party performing work under the Contract at the direction of the Contractor, including affiliates, partners, teammates, and all other third-party vendors.  |
| VPN Concentrator | Virtual Private Network Concentrator. A device, or collection of devices, built to manage secure connections within or between infrastructures.   |
| VRF              | Virtual Routing and Forwarding  |
| WDS              | Wireless Data Service   |
| WVS              | Wireless Voice Service  |