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Rick Scott, Governor

Chad Poppell, Secretary

ATTACHMENT B - CONTRACT

FOR

MyFloridaNet-2

ITN No: DMS-13/14-024

BETWEEN

THE STATE OF FLORIDA DEPARTMENT OF

MANAGEMENT SERVICES AND

<<PARTY NAME>>

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Contract

This contract is between the STATE OF FLORIDA, DEPARTMENT OF MANAGEMENT SERVICES (Department), an agency of the State of Florida with offices at 4050 Esplanade Way, Tallahassee, Florida 32399-0950, and [INSERT CONTRACTOR NAME] (Contractor).

The Contractor responded to the Department's Solicitation No. DMS – 13/14-024, "MFN-2." The parties enter into this contract in accordance with the terms and conditions of the solicitation <<and subsequent negotiation>>.

The parties therefore agree as follows.

1. Definitions

The following definitions apply to this Contract. Please see Contract Attachments for other definitions relevant to this Contract.

- A. Confidential Information:** Any portion of a Respondent's documents, data, or records disclosed relating to its reply that is clearly marked "Confidential" that the Respondent claims are confidential and not subject to disclosure pursuant to chapter 119, Florida statutes, the Florida Constitution, or any other authority.
- B. Contract:** This document plus Attachments. The parties to the Contract will be the Department and Contractor.
- C. Contractor:** The Respondent awarded this Contract pursuant to this solicitation.
- D. Customer:** The state agency or other entity identified in a contract as the party to receive commodities or contractual services from the Contractor under the Contract.
- E. Department:** The Department of Management Services as defined by s. 20.22, Florida Statutes (F.S.). Also referred to herein as "DMS."
- F. Product:** Any deliverable under the Contract, which may include commodities, services, technology or software.
- G. WAN (Wide Area Network):** A data network that covers a broad area; used to connect LANs and other types of networks together, so that users and computers in one location can communicate with users and computers in other locations (i.e., any network whose communications links cross metropolitan, regional, or national boundaries).

2. Term

A. Initial Term.

The initial term of the Contract will be for seven (7) years. The initial contract term shall begin on <<Contract Start Date>> or on the last date it is signed by all parties, whichever is later with an end date of June 30th to coincide with the E-rate funding year end.

B. Renewal Term:

Upon mutual agreement of both parties, the Department and the Contractor may renew the Contract, in whole or in part, for up to seven (7) years, at the renewal terms specified in this contract or as may be agreed to by both parties. Renewal is contingent upon satisfactory performance and subject to availability of funds.

C. Termination

In case of termination as defined in Section 22 and 23 in the Special Conditions, Attachment H, transition assistance shall be provided by the Contractor as specified in Subsection 5.28 of the Statement of Work, Attachment A.

3. Payments

A. Pricing

The Contractor shall adhere to the prices as stated in the Price Workbook, Attachment E, which are incorporated by reference into the Contract.

B. Price Adjustments

- 1) To ensure the Department continues to receive competitive market pricing, at the end of each twelve (12) month period of the Contract the Contractor shall be required to provide benchmark data to the Department that contains the following:
 - a) A comparison of the Department's rates for all services against rates contractually provided to other states, enterprises, and commercial entities for substantially the same or a smaller quantity of services and similar terms as this Contract.
 - b) A comparison of the following on an individual basis:
 - Services and components for each bandwidth speed as defined in the Price Workbook, Attachment E.
 - Equipment percentage discount off of the Manufacturer's Suggested Retail Price (MSRP) List.
 - Other Network and Telecommunication Services defined in the Price Workbook, Attachment E.
- 2) The Parties will, through an Amendment, adjust the Contract rates, pricing, charges and/or discounts, as appropriate, to make the Contract rates comparable to the benchmark's best rates. Rates shall not be increased for the duration of the contract, regardless of the result of any benchmark.
- 3) Pricing and rate reductions shall not be based on averages; rates shall be compared and reduced based on benchmark data on a bandwidth by bandwidth basis.
- 4) The Contractor may also reduce rates and pricing outside the process of benchmarking.

- 5) The Contractor will comply with 47 CFR Part 54, including but not limited to not charging schools, school districts, libraries, library consortia, or consortia including any of these entities a price above the lowest corresponding price for supported services.
- 6) The Department reserves the right to further negotiate reductions in pricing for the renewal years.
- 7) The Contractor shall submit invoices for services in detail sufficient enough for a proper pre-audit and post-audits of the invoices. The Department reserves the right to request additional documentation. In addition, Contractor shall comply with the terms and conditions set forth in Attachment A, Statement of Work, Section 2.6 Business Operations – Requirements.

C. Bills for Travel

Bills for travel expenses, if permitted, must be submitted in accordance s. 112.061, F.S. Separate bills for travel are not permitted.

4. Contract Document

A. Contract Documents & Hierarchy

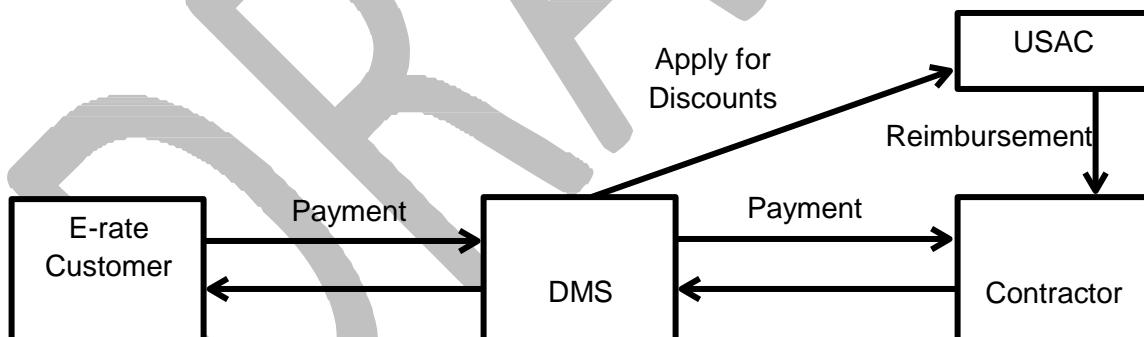
This Contract sets forth the entire understanding of the parties and consists of the documents listed below. In the event that any these documents conflict, the conflict will be resolved in the following order of priority (highest to lowest):

- 1) This Contract
- ~~1)2)~~ Revised Special Conditions
- 32) ~~Attachment 1:~~ Revised Statement of Work and Contract Deliverables
- 34) ~~Attachment 5:~~ Revised MyfloridaNet-2 Services - Service Level Agreements
- 45) ~~Attachment 6:~~ Revised MyfloridaNet-2 Acceptance Criteria Checklist
- 6) PUR 1000 (2006), which is incorporated by reference and available at: <http://www.dms.myflorida.com/content/download/2933/11777/1000.pdf>
- 57) ~~Attachment 2:~~ Best and Final Offer, including response to Statement of Work and the Price Workbook
- 8) Vendor's Acceptable Use Policy, if applicable, in existence at the time of Contract execution.
~~and Performance Measures (Service Level Agreements)~~
- 6) ~~Attachment 3: Revised Special Conditions~~
- ~~7)~~ ~~Attachment 4: PUR 1000 (2006), which is incorporated by reference and available at: <http://www.dms.myflorida.com/content/download/2933/11777/1000.pdf>~~

Vendor's Acceptable Use Policy, if applicable, in existence at the time of Contract execution.

5. E-rate

- A.** The Schools and Libraries Program of the Federal Universal Service Fund, commonly known as "E-rate," is administered by the Universal Service Administrative Company (USAC), through its Schools and Libraries Division (SLD), under the direction of the Federal Communications Commission (FCC). The program provides a means for most K-12 schools and libraries in the United States to obtain discounts on eligible telecommunications, Internet access, and internal connections, in accordance with the annually published Eligible Services List.
- B.** E-rate rules and regulations require the entity that pays vendors for E-rate eligible services and/or equipment on behalf of E-rate eligible schools and libraries (the "Billed Entity") to be the E-rate Applicant for those services. Because the Department will pay the Contractor for services delivered to E-rate eligible schools and libraries under this Contract, the Department will be the Applicant for E-rate discounts for those services. If the Contractor is providing E-rate eligible services and/or equipment to the Department's E-rate eligible customers under the Contract, the Contractor shall meet the requirements in this E-rate section.
- C.** The Business Operations section of the Contract shall apply to any service provided to E-rate eligible customers under the Contract. A brief overview of the Department E-rate process is shown below:



- D.** If the Contractor's authorized resellers or authorized dealers will provide one or more of the Contractor's requirements set forth in this Contract, that authorized reseller or authorized dealer will assume the obligations of the Contractor for this section. In that event, the Contractor will ensure that the authorized reseller or authorized dealer is in compliance with the obligations of this section.
- E.** To be eligible to provide services or equipment to E-rate eligible customers under this Contract, the Contractor must have obtained or applied to obtain a Service Provider Identification Number (SPIN) from USAC prior to execution of the Contract and shall provide relevant SPIN(s) to the Department. The Contractor also is required to submit a Service Provider Annual Certification (SPAC) (Form 473) to USAC each funding year to certify that it will comply with E-rate rules and regulations. The Contractor shall maintain eligibility as an E-rate Service Provider under FCC rules and shall avoid being placed on "Red Light" status by the FCC for the duration of the Contract.
- F.** During the term of the Contract, the Contractor shall be required to take all appropriate action to provide eligible services and/or equipment in compliance with the terms and conditions of the Contract and E-rate rules and regulations. If the Contractor becomes ineligible as an E-rate Service Provider during the term of the Contract or becomes unwilling or unable to provide E-rate eligible services and/or equipment in compliance with the Contract and E-rate rules and regulations, the Department may seek to change to another E-rate Contractor and, if applicable, seek substitute services and/or equipment in accordance with applicable E-rate rules and procedures.
- G.** If during the term of the Contract, the Contractor becomes ineligible as an E-rate Service Provider, becomes unwilling or unable to provide E-rate eligible services and/or equipment in compliance with E-rate rules and regulations or the Contract, or violates E-rate rules and regulations in a way that causes USAC to deny funding for Department applications on behalf of its E-Rate eligible customers, in whole or in part, the following shall apply with respect to any ongoing E-Rate eligible projects:
- 1)** The Contractor shall be liable for the actual direct damages incurred by the Department and any affected E-rate customers that have complied with applicable E-rate rules and regulations as described in paragraphs G.1.a and G.1.b below.
 - a)** In the event that the Department and its E-rate customers change Contractors and seek substitute services and/or equipment pursuant to the above paragraph, direct damages shall include but not be limited to any amounts paid to the substituted Contractor above the Contractor's price under this Contract for the terminated services. The Contractor shall continue to provide the affected services and/or equipment to the Department and any affected E-rate customers until such time as the Department and any affected E-rate customers obtain substitute equipment

as set forth above. In the event the Department or such E-rate customers are unable to obtain USAC approval to change to a new Contractor because the Contractor's actions are deemed insufficient reason for approving a change of service providers under E-rate rules, the Contractor will be liable for the amount of E-rate funding forfeited as a result.

- b) If the Contractor's violation of the E-rate rules and regulations is the reason for the Department and its E-rate customers' loss or forfeiture of E-rate funding, in whole or in part, the value of the lost funding associated with the Contractor's violation will be considered direct damage under this subparagraph 1.
- 2) The Department acknowledges that it has posted an E-rate Form 470 ("Description of Services Requested and Certification Form") in connection with the procurement, which is a prerequisite to E-rate eligible entities utilizing the Contract awarded as a result of the procurement as the basis for E-rate funding applications. Additionally, the Department acknowledges that some E-rate customers may post their own Form 470 and evaluate this Contract as a bid response to that Form 470. Both the Contractor and the Department agree to the following:
 - a) E-rate has specific rules and regulations regarding, among other things, eligibility of services and/or equipment, the manner and timeframes under which USAC and SLD approve funding requests and distributions, the submission of FCC forms and related documentation, document retention and audits in connection with funding under the E-rate program.
 - b) In order to ensure that the billing mechanisms and processes established pursuant to this Contract with respect to the applications for discounts under the E-rate program are in compliance with E-rate requirements and regulations, the duties and responsibilities of each party and the format and content of invoices to the Department are set forth in the Business Operations section of the Contract.
 - c) The Contractor will provide such customary assistance as the Department and E-rate customers deem reasonable with respect to information needed to accurately and timely complete E-rate forms and respond to USAC inquiries regarding the services and/or equipment provided herein.
 - d) The Contractor will comply with all E-rate rules pertaining to document retention and will make available to the Department any such documentation upon request.
 - e) In the event of an audit or review by USAC, the FCC, or any other entity of E-rate compliance related to this Contract, the Contractor agrees to provide timely and customary assistance, information and documentation requested by the Department to satisfy the audit or review.
 - 3) Both Parties agree that the Contractor shall not be deemed a consultant of the Department or its E-rate eligible customers.

6. Contract Administration

A. Department Contract Administrator

As of the effective date of the Contract, the Department Contract Administrator is as follows:

Jesse Tillman
Departmental Purchasing
Department of Management Services
Room No. 335B
4050 Esplanade Way
Tallahassee, Florida 32399
jesse.tillman@dms.myflorida
Telephone: (850) 410-0102

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

B. Department Contract Manager

The Department's Contract Manager during the term of this Contract will have the responsibility to ensure performance, monitor deliverables, and ensure payment is only made upon receipt of those deliverables under the Contract. As of the effective date of the Contract, the Contract Manager is as follows:

Mark Lovell
Contract and Project Management Office
Division of Telecommunications
Suite 180D
Department of Management Services
4030 Esplanade Way
Tallahassee, Florida 32399
Telephone: (850) 414-2723
E-mail: mark.lovell@dms.myflorida.com

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

C. Contractor's Point of Contact

(To be inserted)

A. Diversity Reporting

The State of Florida is committed to supporting its diverse business industry and population through ensuring participation by minority, women, and veteran business enterprises in the economic life of the State. The State of Florida Mentor Protégé Program connects minority, women, and veteran business enterprises with private corporations for business development mentoring. We strongly encourage firms doing business with the State of Florida to consider this initiative. For more information on the Mentor Protégé Program, please contact the Office of Supplier Diversity at (850) 487-

Upon request, the Contractor shall report to the Department, spend with certified and other minority business enterprises. These reports will include the period covered, the name, minority code and Federal Employer Identification Number of each minority vendor utilized during the period, commodities and services provided by the minority business enterprise, and the amount paid to each minority vendor on behalf of each purchasing agency ordering under the terms of this Contract.

7. Liquidated Damages

This provision supersedes PUR 1000, Section 20, "Limitation of Liability".

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

The Contractor acknowledges that untimely performance or other material noncompliance will damage the Department, but by their nature such damages are difficult to ascertain. Accordingly, the liquidated damages provisions in the Statement of Work including Service Level Agreements, will apply to this Contract. Liquidated damages are not intended to be a penalty and are solely intended to compensate for damages.

8. PUR 1000 (2006) General Conditions

The PUR 1000 is modified by Attachment H, Special Conditions.

9. Compliance with Laws

A. Compliance

The Contractor shall 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, chapter 287, F.S., and rule 60A, Florida Administrative Code, govern the Contract. The Contractor shall comply with Section 274 A 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. Violation of any laws, rules, codes, ordinances, or licensing requirements shall be grounds for Contract termination or nonrenewal of the Contract.

B. Notice of Legal Actions

The Contractor shall notify the Department of any legal actions filed against it in the State of Florida for a violation of any laws, rules, codes ordinances, or licensing requirements within 30 days of the action being filed. The Contractor shall notify the Department of any termination for cause or legal actions filed against it for a breach of a

government contract of similar size and scope to this Contract within 30 days of the action being filed. Failure to notify the Department of a legal action within 30 days of the action shall be grounds for termination or nonrenewal of the Contract.

10. Liability and Worker's Compensation Insurance

This paragraph supersedes PUR 1000, Section 35. During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract, which, at a minimum, shall be as follows: workers' compensation and employer's liability insurance in accordance with the laws of the State of Florida and in amounts sufficient to secure the benefits of the Florida Workers' Compensation Law for all employees engaged in any Contract work; commercial general liability coverage on an occurrence basis in the minimum amount of \$500,000 and \$1,000,000 annual aggregate (defense cost shall be in excess of the limit of liability), including naming the State as an additional insured; and automobile liability insurance ~~covering all vehicles, owned or otherwise, used in the Contract work, with minimum~~ combined limits of \$500,000, including hired and non-owned liability, and \$5,000 medical payment. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of the Contract. The Contract shall not limit the types of insurance Contractor may desire to obtain or be required to obtain by law. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers eligible authorized to write policies in Florida and rated at least A-VII by AM Best.

11. Public Records

A. Access to Public Records

The Department 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 Art. I of the Florida State Constitution and s. 119.07(1), F.S.

B. Redacted Copies of Confidential Information

If Contractor considers any portion of any documents, data, or records submitted to the Department to be confidential, proprietary, trade secret or otherwise not subject to disclosure pursuant to chapter 119, F.S., the Florida Constitution or other authority, Contractor must simultaneously provide the Department with a separate redacted copy of the information it claims as Confidential and briefly describe in writing the grounds for claiming exemption from the public records law, including the specific statutory citation for such exemption. This redacted copy shall contain the Contract name and number, and shall be clearly titled "Confidential." The redacted copy should only redact those portions of material that the Contractor claims is confidential, proprietary, trade secret or otherwise not subject to disclosure.

C. Request for Redacted Information

In the event of a public records or other disclosure request pursuant to chapter 119, F.S., the Florida Constitution or other authority, to which documents that are marked as "Confidential" are responsive, the Department will provide the Contractor-redacted

copies to the requestor. If a requestor asserts a right to the Confidential Information, the Department will notify the Contractor such an assertion has been made. It is the Contractor's responsibility to assert that the information in question is exempt from disclosure under chapter 119 or other applicable law. If the Department becomes subject to a demand for discovery or disclosure of the Confidential Information of the Contractor under legal process, the Department shall give the Contractor prompt notice of the demand prior to releasing the information labeled "Confidential" (unless otherwise prohibited by applicable law). Contractor shall be responsible for defending its determination that the redacted portions of its response are confidential, proprietary, trade secret, or otherwise not subject to disclosure.

D. Indemnification

Contractor shall protect, defend, and indemnify the Department for any and all claims arising from or relating to Contractor's determination that the redacted portions of its response are confidential, proprietary, trade secret, or otherwise not subject to disclosure. If Contractor fails to submit a redacted copy of information it claims is Confidential, the Department is authorized to produce the entire documents, data, or records submitted to the Department in answer to a public records request or other lawful request for these records.

E. Contractor as Agent

If, under this Contract, the Contractor is providing services and is acting on behalf of the Department as provided under s.119.011(2), F.S., the Contractor, subject to the terms of s.287.058(1)(c), F.S., and any other applicable legal and equitable remedies, shall:

- 1) Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the service.
- 2) Provide the public with access to public records on the same terms and conditions that the Department would provide the records and 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 requirements are not disclosed except as authorized by law.
- 9) Meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the Contractor upon termination of the Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.

12. Intellectual Property

Any Intellectual Property developed for delivery to the State under this Contract, but excluding the Supplier Network Infrastructure and Supplier Intellectual Property, will belong to and is the sole property of the State, and may be copyrighted, patented, or otherwise restricted as provided by Florida or Federal law. During and after the contract term, the Department shall have full and complete ownership and complete access to all such Intellectual Property

A. Software developed for delivery to the State pursuant to the Contract including without limitation:

- The written source code;
- The source code files;
- The executable code;
- The executable code files;
- The data dictionary;
- The data flow diagram;
- The work flow diagram;
- The entity relationship diagram; and
- All other documentation needed to enable the Department to support, recreate, revise, repair, or otherwise make use of the software.

B. Other documentation developed for delivery to the State pursuant to the Contract including without limitation:

- Operational plans, manuals, and guides;
- Process and procedures documentation;
- Process design documents;
- Operational schedules; and
- Network Design documents

This provision will survive the termination or expiration of this Contract.

For avoidance of doubt, Supplier and its suppliers shall retain all of their ownership interest in Intellectual Property created prior to or independently of this Agreement (“Supplier Intellectual Property”).

The State shall have a perpetual, non-exclusive license to any router configurations that are installed on equipment that is owned by the State or that becomes owned by the State pursuant to this Agreement.

“**Intellectual Property**” means software and literary works or other works of authorship, including documentation, reports, drawings, charts, graphics, and other written documentation.

“**Supplier Network Infrastructure**” means (i) the public or shared networks of Supplier, its Affiliates and their suppliers, and the equipment, tools, technologies, software, and other materials that are components thereof, (ii) equipment, tools, technologies, software and other materials provided and used by Supplier, its Affiliates and their suppliers in shared network management and back office environments, and (iii) software that is licensed by Supplier and its Affiliates for use solely in connection with the services of Supplier and its Affiliates that would not be required for the State to receive similar services from another provider, , and (iv) all modifications, upgrades, derivative works, enhancements, improvements and extensions of any of the foregoing.

13. E-Verify

Pursuant to State of Florida Executive Order Number 11-116, the Contractor is required to utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment

Florida Department of Management Services

eligibility of all new employees hired by the Contractor during the Contract term. Also, Contractor shall include in related subcontracts a requirement that subcontractors performing work or providing services pursuant to the Contract utilize the E-Verify system to verify employment eligibility of all new employees hired by the subcontractor during the Contract term.

14. Scrutinized Company List

In executing this Contract, Contractor certifies it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, F.S. Pursuant to s. 287.135(5), F.S., Contractor agrees the Department may immediately terminate this 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 or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List during the term of the Contract.

15. Geographic Location of Data and Services

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 continental U.S. and will not be transferred outside of the continental U.S. The State of Florida also requires that all services provided under the Contract, including call center or other help services, will be performed by persons located in the continental U.S.

16. Records Retention

The Contractor shall 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 shall retain all documents related to this Contract pursuant to s. 257.36, F.S., Records and Information Management. If Contractor provides E-rate-eligible services and/or equipment pursuant to this Contract, Contractor agrees to comply with all FCC/USAC E-rate document retention rules and regulations.

17. Gifts

The Contractor agrees that it will not offer to give or give any gift to any State of Florida employee. This Contractor will ensure that its subcontractors, if any, will comply with this provision. If Contractor provides E-rate-eligible services and/or equipment pursuant to this Contract, Contractor agrees to comply with all E-rate gift rules, in accordance with 47 C.F.R. § 54.503 and FCC/USAC regulations and requirements.

18. Vendor Ombudsman

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this office are found in s. 215.422, F.S., which include disseminating information relative to prompt payment and assisting vendors in receiving their payments in a timely manner from a Customer. The Vendor Ombudsman may be contacted via email to ombudsman@dos.state.fl.us or telephone to (850) 413-5516.

19. Reviews and Monitoring by the Department

The Contractor shall permit all persons who are duly authorized by the Department to inspect and copy any records, papers, documents, facilities, goods, and services of the Contractor that are relevant to this Contract, and to interview clients, employees, and subcontractor employees of the Contractor to assure the Department of satisfactory performance of the terms and conditions of this Contract. Following such a review, the Department may deliver to the Contractor a written report of its finding, and may direct the development, by the Contractor, of a corrective action plan. This provision will not limit the Department's termination rights.

20. Audits

The Department may conduct or have conducted performance and/or compliance audits of any and all areas of the Contractor and/or subcontractors as determined by the Department. The Department may conduct an audit and review all the Contractor's (and subcontractors') data and records that pertain to the Contract Services. 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 which pertain to this Contract may be inspected by the Department upon fifteen (15) days' notice, during normal working hours, and in accordance with the Contractor's facility access procedures where facility access is required. Release statements from its subcontractors, partners or agents are not required for the Department or its designee to conduct compliance and performance audits on any of the Contractor's contracts which pertain to this Contract. The State's Chief Financial Officer and the Office of the Auditor General also have authority to perform audits and inspections.

21. Background Screening Requirements

A. Background Screening.

In addition to any background screening required by the Contractor as a condition of employment, the Contractor warrants that it will conduct a criminal background screening of, or ensure that such a screening is conducted for, each of its employees, subcontractor personnel, independent contractors, leased employees, volunteers, licensees, or other persons, hereinafter referred to as "Person" or "Persons," operating under their direction with access to State of Florida data or who enter the premises and facilities of Customer, or both. "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network. "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs, or instructions, whether said information is confidential information or personal information. Data may be in any form, including but not limited to, in storage media, stored in the memory of the computer, in transit or presented on a display device, or a hard copy. The Contractor shall ensure that the background screening is conducted on all Persons directly performing services under the Contract whether or not the Person has access to State of Florida Data, as well as those persons who are not performing services under the Contract but have access, including indirect access, to State of Florida Data.

B. Background Check Required

The Contractor shall not allow any Person to provide services under this contract, have access to any State of Florida data, or enter any facility of a Customer until cleared under the standards and procedures provided below. The Contractor agrees that each Person will be screened as a prior condition for performing services, having access to State of Florida data, or entering the facilities of a Customer. 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

shall maintain documentation of the screening in the Person's employment file.

C. Disqualifying Offenses/ Criminal Finding

The minimum background screening process shall be a Level 1 Background Check, as defined in Florida Statutes, performed through the Florida Department of Law Enforcement (FDLE). If not included in the Level 1 Background Check, a criminal finding with respect to any of the following offenses also disqualifies the Person:

- a) Computer related or information technology crimes
- b) Fraudulent practices, false pretenses and frauds, and credit card crimes
- c) Forgery and counterfeiting
- d) Violations involving checks and drafts
- e) Felony theft

A "Criminal Finding" is defined as a misdemeanor or felony conviction, plea of nolo contendere, plea of guilty, or adjudication of guilt withheld for any disqualifying offense. If at any time it is determined that a Person has a Criminal Finding within the last ~~seven~~ **seventeen (17)** years from the date of the court's determination for the disqualifying offenses 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.

If the Contractor removes a Person from a position under this provision due to a Criminal Finding, 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 shall consider the following factors only in making the determination: i) the 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) the relevancy of the offense to the job duties of the Person. During the process of collecting the information and making a decision, the Contractor shall not allow the Person to perform services or have access to State of Florida data.

D. Additional Background Screening Process and Standard: Level 2

If requested by DMS with respect to the security needs of a Customer, Contractor shall have an additional background screening performed for each Person providing service to the User, having access to the User's data, or who may enter the User's facilities. The additional background screening shall be a Level 2 Background Check, as defined in Florida Statutes, performed through FDLE.

1) Self-Disclosure

The Contractor shall ensure that all Persons have a responsibility to self-report to the Contractor within three (3) calendar days a Criminal Finding or an updated court disposition of a Criminal Finding. The Contractor shall notify the Department's Contract Manager within 24 hours of all details concerning any Criminal Finding or updated court disposition of such Criminal Finding as reported by a Person. The Contractor shall immediately assess whether to disallow that Person access to any State of Florida Data

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 Findings and shall maintain that certification in the employment file.

2) Refresh Screening

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

3) Monthly Reporting

The Contractor is required to submit a written report to the Department's Contract Manager within fifteen (15) days from the end of each month listing those Persons who have been screened, those Persons with Criminal Findings who have been removed from performing services or having access to State of Florida Data, and those Persons with Criminal Findings that the Contractor has allowed to provide services or allowed access to State of Florida data through the process described in paragraph 21C., above. The monthly report by the Contractor shall at a minimum include the name of the Person, the title of the Person's position, a description of the job, and a description and date of the Criminal Finding and, where applicable, an updated status of the court proceeding or ultimate disposition

E. Duty to Provide Secure Data

The Contractor shall 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 shall also comply with all other State and Federal rules and regulations regarding security of information.

F. 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 business days prior written notice to the Contractor during the Term of the Contract. The Department shall have the right to inspect the Contractor's work area 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.

22. Security Breach

Should a breach of security occur due to Contractor negligence or misconduct which allows for unauthorized access or exposure of State of Florida Data, 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. In addition, the Contractor shall:

- A.** Include credit monitoring services at its own cost for those individuals affected or potentially affected by a breach of this warranty for a two (2) year period of time following the breach.
- B.** Be responsible for any and all damages to any customer.

23. Subcontracting

The Contractor shall be fully responsible for all work performed under this Contract including but not limited to all planning, managing, implementing, operating, supporting, and warranting. If the Contractor needs to subcontract for any services with a subcontractor other than the subcontractors specified in this Contract, the Contractor shall submit a written request to the Department's Contract Manager if the subcontractor will be performing functions that are set forth in the Statement of Work in this contract or otherwise material to the provision of MFN-2. The written request shall include, but is not limited to, the following:

- A. The name, address and other information identifying the subcontractor;
- B. A description of the services to be performed by the subcontractor and why the Service Provider is unable to perform this service;
- C. Time of performance of the identified service;
- D. A description of how the Contractor plans to monitor the subcontractor's performance of the identified services;
- E. Documentation that the subcontractor has all licenses and has satisfied all legal requirements to provide the Services per the Contract and is approved by the Florida Department of State to transact business in the State of Florida;
- F. Documentation that the subcontractor has successfully completed work comparable in scope and specification to that required by the Contract, and is qualified both technically and financially to perform services via a subcontract; and
- G. Acknowledgement from the subcontractor that the subcontractor agrees to comply with all terms and conditions of the Contract if the subcontractor will be performing functions that are set forth in the Statement of Work in this contract or otherwise material to the provision of MFN-2. This includes but is not limited to Section 10, Liability and Worker's Compensation Insurance requirements.

All subcontractors providing services or equipment that are set forth in the Statement of Work in this contract or otherwise material to the MFN-2 must be approved in writing by the Department's Contract Manager before providing any product. The Contractor shall expect no less than 60 days for approval of a proposed subcontractor.

The Contractor is solely responsible for insuring that the subcontractor performs as specified in the Contract and subcontract. During the term of the Contract, and subject to prior written approval of the Department's Contract Manager (i.e., approval before services are provided by a subcontractor) if the subcontractor will be performing functions that are— set forth in the Statement of Work in this contract or otherwise material to the provision of MFN-2, subcontractors may be substituted or added. The Contractor's use of a subcontractor not specified in this Contract or approved by the Department's Contract Manager as provided above shall constitute a breach of Contract.

24. Performance Bond

- A. Within 30 days of contract execution, Contractor will deliver to the Department's Contract Manager a Performance Bond in the amount of \$60 million. The bond shall be used to guarantee at least satisfactory performance by the Contractor throughout the term of the contract.

- B.** No sooner than two 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 by both parties.
- C.** The Performance Bond shall be maintained throughout the term of the Contract, issued by an acceptable surety company which is licensed to do business in the State of Florida, as determined by the Department, and must name the Department as the beneficiary. The insurer or bonding company shall pay losses suffered by the State directly to the Department.
- D.** 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.
- E.** The Department shall not be responsible for any premiums or assessments on or in relation to the Performance Bond.
- F.** 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.
- G.** Within 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.
- H.** The Performance Bond provided under this Section shall be used solely to the extent necessary to satisfy the damage claims made by the State pursuant to the terms of the Contract. In no event shall the Performance Bond be construed as a penalty bond.

25. This paragraph intentionally left blank.

26. Preferred Price Affidavit Requirement

The Contractor shall submit to the Department, at least annually an affidavit from an authorized representative attesting that the Contractor is in compliance with the preferred pricing provision in Section 4(b) of the Special Conditions and Section 3.B.2 of the Contract.

27. Specific Appropriation

The following is the specific State funds from which the State will make payment under the contract in the first year of the contract:

APPROPRIATION LINE ITEM XXXX;
\$XXXX

The Department is authorized by statute to submit budget amendments in accordance with chapter 216, F.S., to increase Specific Appropriation XXXX, in the event that payments for

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

FLORIDA DEPARTMENT OF MANAGEMENT SERVICES

Chad Poppell, Secretary

Date

<INSERT VENDOR NAME>

Signature

Print Name and Title

Date

ATTACHMENTS

- 1) [Revised Special Conditions](#)
- 22) [Attachment 1](#): Revised Statement of Work and Contract Deliverables
- 33) [Attachment 5](#): Revised MyfloridaNet-2 Services - Service Level Agreements
- 44) [Attachment 6](#): Revised MyfloridaNet-2 Acceptance Criteria Checklist
- 5) [PUR 1000 \(2006\), which is incorporated by reference and available at: <http://www.dms.myflorida.com/content/download/2933/11777/1000.pdf>](#)
- 56) [Attachment 2](#): Best and Final Offer, including response to Statement of Work and the Price Workbook
- 7) [Vendor's Acceptable Use Policy, if applicable, in existence at the time of Contract execution.](#)
~~and Performance Measures (Service Level Agreements)~~
- 6) ~~Attachment 3: Revised Special Conditions~~