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|---------------|---------------|------------------|
| Agency: _____ |               |                  |
| Vendor: _____ | Product _____ | /Service:- _____ |

GENERAL CLAUSES

\_\_\_ **TERM:** This Agreement is effective \_\_\_\_\_ and will end no later than \_\_\_\_\_ unless otherwise terminated in accordance with the Termination provisions of this Agreement. *(Agency should address term of the contract and any renewal options that can be exercised.)*

\_\_\_ **APPLICABLE LAW:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Louisiana. Venue of any action brought with regard to this Agreement shall be in the Nineteenth Judicial District Court, parish of East Baton Rouge, State of Louisiana.

\_\_\_ **INDEMNIFICATION AND LIMITATION OF LIABILITY :** Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under this Agreement.

Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the State from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Contractor, its agents, employees, partners or subcontractors in the performance of this contract, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State.

Contractor will indemnify, defend and hold the State harmless, **without limitation**, from and against any and all damages, expenses (including reasonable attorneys' fees), claims judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Products, Materials or Services furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the State shall give the Contractor: (i) prompt written notice

of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: i) State=s unauthorized modification or alteration of a Product, Material or Service; ii) State's use of the Service in combination with other products, materials, or services not furnished by Contractor; iii) State's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion as the state=s exclusive remedy to take action in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non- infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the State up to the dollar amount of the Contract.

For all other claims against the Contractor where liability is not otherwise set forth in the Agreement as being without limitation, and regardless of the basis on which the claim is made, Contractor's liability **for direct damages, shall be the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges for services rendered by the Contractor under the Contract.** Unless otherwise specifically enumerated herein mutually agreed between the parties, neither party shall be liable to the other

for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The State may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

\_\_\_ **CODE OF ETHICS:** The contractor acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 et. seq., Code of Governmental Ethics) applies to the Contracting Party in the performance of services called for in this agreement. The Contractor agrees to immediately notify the state if potential violations of the Code of Governmental Ethics arise at any time during the term of this agreement.

\_\_\_ **WAIVER:** Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified or deleted except by the written consent of both parties

\_\_\_ **HEADINGS;** Descriptive headings in this agreement are for convenience only and shall not affect the construction of this agreement or meaning of contractual language.

\_\_\_ **ASSIGNMENT:** No contractor shall assign any interest in this agreement by assignment, transfer, or novation, without prior written consent of the State. This provision shall not be construed to prohibit the contractor from assigning his bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State.

\_\_\_ **CONTRACT CONTROVERSIES:** Any claim or controversy arising out of the agreement shall be resolved by the provisions of Louisiana Revised Statute 39:1673.

\_\_\_ **RIGHT TO AUDIT:** The State Legislative auditor, federal auditors and internal auditors of the State, or others so designated by the State, shall have the option to audit all accounts directly pertaining to the contract for a period of five (5) years after project acceptance or as required by applicable State and Federal Law. Records shall be made available during normal working hours for this purpose.

\_\_\_ **COMPLETE AGREEMENT:** This is the complete Agreement between the parties with respect to the subject matter and all prior discussions and negotiations are merged into this contract. This Agreement is entered into with neither party relying on any statement or representation made by the other party not embodied in this Agreement and there are no other agreements or understanding changing or modifying the terms. This Agreement shall become effective upon final statutory approval.

\_\_\_ **CONTRACT MODIFICATIONS:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required by law. No oral understanding or agreement not incorporated in the contract is binding on any of the parties.

\_\_\_ **SEVERABILITY:** If any term or condition of this Agreement, or the application thereof, is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application; to this end the terms and conditions of this Agreement are severable.

\_\_\_ **TAXES:** Any taxes, other than State and local sales and use taxes from which the State is exempt, shall be assumed to be included within the total cost shown in Attachment\_\_\_\_\_.

## TERMINATION CLAUSES:

\_\_\_ **TERMINATION FOR CONVENIENCE:** The State may terminate this Agreement at any time by giving thirty (30) days written notice to contractor of such termination or negotiating with the Contractor an effective date.

\_\_\_ **TERMINATION FOR CAUSE:** The State may terminate this agreement for cause based upon the failure of Contractor to comply with the terms and/or conditions of the Agreement provided that the State shall give the Contractor written notice specifying the Contractor's failure. If within thirty

(30) days after receipt of such notice, the Contractor shall not have corrected such failure or, in the case of failure which cannot be corrected in (30) days, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then the State may, at its option, place the Contractor in default and the Agreement shall terminate on the date specified in such notice.

The Contractor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the State to comply with the terms and conditions of this agreement, provided that the Contractor shall give the State written notice specifying the State's failure and a reasonable opportunity for the State to cure the defect.

— **TERMINATION FOR NON-APPROPRIATION OF FUNDS:**

The continuation of this contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act of Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds have not been appropriated.

— **SECURITY:** Contractor's personnel will comply with all security regulations in effect at the State's premises, and externally for materials and property belonging to the State or to the project. Where special security precautions are warranted (e.g., correctional facilities), the State shall provide such procedures to the Contractor, accordingly. Contractor is responsible for promptly reporting to the State any known breach of security.

— **CONFIDENTIALITY:** The following provision will apply unless the State Agency specifically indicates that all information exchanged will be non-confidential:

All financial, statistical, personal, technical and other data and information relating to the State's operations which are designated confidential by the State and made available to the Contractor in

order to carry out this Agreement or which becomes available to the Contractor in carrying out this Agreement, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of the paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of the contract, or is rightfully obtained from third parties.

— **COMPLIANCE WITH CIVIL RIGHTS LAWS:**

The Contractor agrees to abide by the requirements of the following as applicable: Title VI and Title VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1975, and Contractor agrees to abide by the requirements of the Americans with Disabilities Act of 1990. Contractor agrees not to discriminate in its employment practices, and will render services under this Agreement and any contract entered into as a result of this Agreement, without regard to race, color, religion, sex, national origin, veteran status, political affiliation, or disabilities. Any act of discrimination committed by Contractor, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this Agreement and any contract entered into as a result of this Agreement.

— **PAYMENT:** The Contractor shall invoice the State Agency directly and payment shall be made by the State Agency directly to the Contractor in accordance with the payment terms agreed to in Attachment \_\_\_\_.

- **USE OF AGENCY'S FACILITIES:** Any property of the State furnished to the Contractor shall be used only for the performance of this Services Agreement.

The Contractor shall be responsible for any loss or damage to property of the State and/or State Agency which results from willful misconduct or lack of good faith on the part of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices, to ensure that the property will be returned to the State and/or State Agency in like condition, except for normal wear and tear, to that in which it was furnished to the Contractor. Upon the happening of loss, or destruction of, or damage to property of the State, the Contractor shall notify the State thereof and shall take all reasonable steps to protect that property from further damage.

The Contractor shall surrender to the State Agency all property of the State Agency prior to settlement upon completion, termination, or cancellation of this Agreement. All reference to the Contractor under this section shall include any of its employees, agents, or subcontractors.

- **LATE PAYMENTS:** Interest due by a State agency for late payments shall be in accordance with R.S. 39:1695.

#### **OTHER CLAUSES FOR USE AS APPLICABLE:**

- **COMMENCEMENT OF WORK:** No work shall be performed by Contractor and the State shall not be bound until such time as this Agreement is fully executed between the State Agency and the Contractor and all required approvals are obtained.

- **SUBCONTRACTORS:** The Contractor may enter into subcontracts with third parties for the performance of any part of the Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the State and/or State Agency for any breach in the performance of the Contractor's duties. The Contractor will be the single point of contact for all subcontractor work.

- **WARRANTIES:** Contractor warrants that all services shall be performed in a workmanlike manner, and according to its current description contained in this Agreement.

*No Surreptitious Code Warranty.* Contractor warrants that Contractor will make all commercially reasonable efforts not to include any Unauthorized Code in any software provided hereunder. "Unauthorized Code" means any virus, Trojan horse, worm or other software routine or component designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data, or to perform any other such actions. Excluded from this prohibition are identified and State-authorized features designed for purposes of maintenance or technical support.

Extent of Warranty:

THESE WARRANTIES REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

- **INSURANCE:** [STATE AGENCIES MAY REQUIRE ADDITIONAL INSURANCE DEPENDING ON THE SCOPE OF THE PROJECT. AGENCIES SHOULD CONTACT THE OFFICE OF RISK MANAGEMENT FOR GUIDANCE]

Insurance shall be placed with insurers with an A.M. Best's rating of no less than A-:VI. This rating requirement shall be waived for Worker's Compensation coverage only.

Contractor's Insurance: The Contractor shall not commence work under this contract until he has obtained all insurance required herein. Certificates of Insurance, fully executed by officers of the Insurance Company written or countersigned by an authorized Louisiana agency, shall be filed with the State of Louisiana for approval. The Contractor shall not allow any sub-contractor to commence work on his subcontract until all similar insurance required for the subcontractor has been obtained and approved. If so requested, the Contractor shall also submit copies of insurance policies for inspection and approval of the State of Louisiana before work is commenced. Said policies shall not hereafter be canceled, permitted to expire, or be changed without thirty (30) days notice in

advance to the State of Louisiana and consented to by the State of Louisiana in writing and the policies shall so provide.

**Compensation Insurance:** Before any work is commenced, the Contractor shall maintain during the life of the contract, Workers= Compensation Insurance for all of the Contractor=s employees employed at the site of the project. In case any work is sublet, the Contractor shall require the subcontractor similarly to provide Workers= Compensation Insurance for all the latter=s employees, unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in work under the contract at the site of the project is not protected under the Workers= Compensation Statute, the Contractor shall provide for any such employees, and shall further provide or cause any and all subcontractors to provide Employer=s Liability Insurance for the protection of such employees not protected by the Workers= Compensation Statute.

**Commercial General Liability Insurance:** The Contractor shall maintain during the life of the contract such Commercial General Liability Insurance which shall protect him, the State, and any subcontractor during the performance of work covered by the contract from claims or damages for personal injury, including accidental death, as well as for claims for property damages, which may arise from operations under the contract, whether such operations be by himself or by a subcontractor, or by anyone directly or indirectly employed by either or them, or in such a manner as to impose liability to the State. Such insurance shall name the State as additional insured for claims arising from or as the result of the operations of the Contractor or his subcontractors. In the absence of specific regulations, the amount of coverage shall be as follows: Commercial General Liability Insurance, including bodily injury, property damage and contractual liability, with combined single limits of \$1,000,000.

**Insurance Covering Special Hazards:** Special hazards as determined by the State shall be covered by rider or riders in the Commercial General Liability Insurance Policy or policies herein elsewhere required to be furnished by the Contractor, or by separate policies of insurance in the amounts as defined in any Special Conditions of the contract included therewith.

**Licensed and Non-Licensed Motor Vehicles:** The Contractor shall maintain during the life of the contract, Automobile Liability Insurance in an amount not less than combined single limits of \$1,000,000 per occurrence for bodily injury/property damage. Such insurance shall cover the use of any non-licensed motor vehicles engaged in operations within the terms of the contract on the site of the work to be performed thereunder, unless such coverage is included in insurance elsewhere specified.

**Subcontractor=s Insurance:** The Contractor shall require that any and all subcontractors, which are not protected under the Contractor=s own insurance policies, take and maintain insurance of the same nature and in the same amounts as required of the Contractor.