



**Attachment A – Special Terms & Conditions  
Regional Moves, Adds and Changes (MAC)  
Contract No. 4400015435      T-Number 92931 YT**

**CONTRACTUAL TERMS AND CONDITIONS**

**GENERAL TERMS AND CONDITIONS**

**TAXES**

Bidders should be aware that any taxes levied upon the selected bidder or their equipment shall be paid in accordance with current tax laws in effect at the time of the purchase by the State. Selected bidders shall pay all other taxes or assessments, however designated, imposed or levied in connection with the contract and shall be solely responsible for remitting such taxes or assessments to the appropriate taxing or collection agency.

**COMPLIANCE WITH LAWS, REGULATIONS, CODES, AND ORDINANCES**

The selected bidder shall comply with all applicable provisions of federal and state statutes, laws, and regulations; parish and city codes or ordinances, specifically the National Electrical Code, Part 68 of the Federal Communications Commission's Rules and Regulations, tariffs or the Louisiana Public Service Commission, and all Louisiana laws and regulations regarding procurement including La. R.S. 37:2163. The selected bidder shall be responsible for all licenses, permits, and inspection fees required.

**CONTRACTOR RESPONSIBILITIES**

The Contractor assumes responsibility for all items and/or services offered in their bid response whether or not the Contractor produces or provides them. Further, the State shall consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

**GOVERNING LAW**

All activities associated with this contract shall be interpreted under Louisiana Law, including but not limited to La. R.S. 39:1551-1736 (Louisiana Procurement Code) and La. R.S. 39:196-200 (Information Technology Procurement Code); purchasing rules and regulations; executive orders; standard terms and conditions; special terms and conditions; and specifications listed in this ITB. Venue of any action brought with regard to the Contract shall be in the Nineteenth Judicial Court, Parish of East Baton Rouge, State of Louisiana.

**BID DOCUMENT AND BID RESPONSE INCORPORATED BY REFERENCE**

The provisions of the selected bid response and this ITB with all addenda shall be incorporated by reference in the contract.



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**ORDER OF PRECEDENCE**

In the event of ambiguity in the specifications, the order of precedence shall be the ITB and then the bid response.

**WAIVER CLAUSE**

Waiver of any breach of any term or condition of the contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of the contract shall be held to be waived, modified, or deleted except by the written consent of both parties.

**SEVERABILITY**

If any term or condition of the contract 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 the contract are declared severable.

**RIGHT TO AUDIT**

The State Legislative auditor, federal auditors and internal auditors of the Division of Administration, or others so designated by the DOA, shall have the option to audit all accounts directly pertaining to the contract for a period of five (5) years from the date of the last payment made under the contract or as required by applicable State and Federal law. Records shall be made available during normal working hours for this purpose.

**COMMISSIONER'S STATEMENTS**

Statements, acts and omissions made by or on behalf of the Commissioner of Administration regarding this ITB, any bidder and/or any subcontractor of a bidder shall not be deemed a conflict of interest when the Commissioner is discharging his duties and responsibilities under law, including, but not limited, to the Commissioner of Administration's authority in procurement matters.

**BIDDER'S COOPERATION**

Any bidder has the duty to fully cooperate with the State and provide any and all requested information, documentation, etc., to the State when requested. This applies even if an eventual contract is terminated and/or a lawsuit is filed. Specifically, the bidder shall not limit or impede the State's right to audit or to withhold State owned documents.



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**CONTRACT TERM**

The initial contract shall be for a thirty-six (36) month period from **September 12, 2018** through **September 11, 2021**.

**RENEWAL TERM**

Upon acceptance by the Contractor and approval by the State, the contract may be renewed for two (2) additional twenty-four (24) month periods at the same prices, terms and conditions not to exceed eighty-four (84) months.

**ORDERS**

Written orders shall be issued by the acquiring state agency and sent to OTS. OTS shall review and approve orders issued by state agencies from the contract. **The Contractor shall not accept orders directly from state agencies.**

**CHANGE ORDERS**

Modifications to an initial order shall be made in writing by OTS and shall be known as a change order. **Contractors shall not accept change orders directly from agencies.**

**INVOICING**

All invoices shall be itemized in the same units and at the same rates or prices as bid by the Contractor.

Invoices shall reference the written order number and shall be itemized with item numbers, contract numbers, OTS numbers (if applicable), item descriptions, quantities, and prices as indicated on the written order. Invoices which do not comply shall be returned to the Contractor.

The Contractor shall submit invoices for state agencies **directly to OTS**. OTS shall reconcile and approve state agency invoices. The Contractor shall not submit an invoice directly to the using state agency. The State may cancel the contract if it has been determined that the Contractor has billed a state agency directly.

**PAYMENTS**

OTS shall be responsible for payment of invoices for all orders issued and approved by OTS.

**REPORTS**

The Contractor shall provide an annual usage report by region. At a minimum, the report shall include the contract line number, purchasing agency name, purchase order date, agency purchase order



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number, invoice number, model number, brand, item description, unit of measure, quantity, and unit price.

Upon Request, the Contractor shall provide additional usage reports.

The Contractor shall provide the reports within fourteen (14) calendar days of request.

A sample of the usage report format is included herein as Appendix 8.2.

### **TERMINATION**

The State of Louisiana has the right to terminate the contract immediately for any of the following reasons: (a) misrepresentation by the Contractor; (b) Contractor's fraud, collusion, conspiracy or other unlawful means by obtaining any contract with the State of Louisiana; (c) conflict of contract provisions with constitutional or statutory provisions of State or Federal Law; (d) abusive or belligerent conduct by Contractor towards an employee or agent of the State; (e) Contractor's intentional violation of the Procurement Code (La.RS 39:1551 et seq.) and its corresponding regulations; or, (f) any listed reason for debarment under La. R.S. 39:1672.

### **TERMINATION FOR CAUSE**

The State may terminate the contract or any orders issued pursuant to the contract for cause based upon the failure of Contractor to comply with the terms and/or conditions of the contract or any orders issued pursuant to the contract 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 either corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the State may, at its option, place the Contractor in default and the contract or any orders issued pursuant to the contract shall terminate on the date specified in such notice. Failure to perform within the time specified in the bid document or bid response shall constitute a default and may cause cancellation of the contract or any orders issued pursuant to the contract. Where the State has determined the Contractor to be in default, the State reserves the right to obtain any or all products or services covered by the contract or any orders issued pursuant to the contract on the open market and to charge the Contractor with cost in excess of the contract price. Until such assessed charges have been paid, no subsequent bid response from the defaulting Contractor shall be considered.

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 the contract or any orders issued pursuant to the contract 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 CONVENIENCE**



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The State may terminate the contract or any orders issued pursuant to the contract at any time (1) by giving thirty (30) days written notice to the Contractor of such termination; or (2) by negotiating with the Contractor an effective date. The State shall pay Contractor for, if applicable: (a) deliverables in progress; (b) the percentage that has been completed satisfactorily; and, (c) for transaction-based services up to date of termination, to the extent work has been performed satisfactorily.

**TERMINATION FOR NON-APPROPRIATION OF FUNDS**

The continuation of the contract or any orders issued pursuant to the contract is contingent upon the continuation of an appropriation of funds by the Legislature to fulfill the requirements of the contract or any orders issued pursuant to the contract. If the Legislature fails to appropriate sufficient monies to provide for the continuation of a contract or any orders issued pursuant to the contract or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act or Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriations 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 or any orders issued pursuant to the contract, the contract or any orders issued pursuant to the contract shall terminate on the last day of the fiscal year for which funds were appropriated.

**CONTRACT MODIFICATIONS**

Contract modifications may result from technological enhancements, manufacturer discontinuance, or obsolescence. If an item meets or exceeds original specifications and the price is equal to or lower than the original bid price, a contract modification may be requested in writing by the Contractor to the OTS Contracts Administrator. The Office of Technology Services shall review the request and make a written recommendation to the Office of State Procurement. Revisions/Modifications will become effective only upon approval by the Office of State Procurement.

**CONTRACT CONTROVERSIES**

Contract controversies between the State and Contractor which arise by virtue of the contract between them shall be handled in accordance with Louisiana Procurement Code specifically La. R.S. 39:1673. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modifications or rescission.

**WARRANTY/SERVICE GUARANTEE REQUIREMENTS**

Warranty shall mean it is the responsibility of the Contractor to repair or replace defective parts (including parts and labor) at no additional cost to the State for one year following the acceptance date.

Warranty for critical cabling problems, as defined in Section 2.1, Definitions, shall have a response time of twenty-four (24) hours to be onsite from the time the State reports the problem.



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Warranty service for non-critical system problems (should this be non-critical cabling problems?), as defined in Section 2.1, Definitions, shall have a response time of two (2) calendar days to be onsite from the time the State reports the problem.

All material and labor shall include a one (1) year warranty against defects in materials, performance, and workmanship.

**LIQUIDATED DAMAGES**

It is understood and agreed between the State and the Contractor, that time is of the essence and that for each calendar day of delay beyond the installation intervals defined in Section 3.3.3.5.1 after due allowance for such extension or extensions of time that may be consented to by the State, and through a maximum of thirty (30) calendar days, the Contractor shall pay to the State as liquidated damages the sum of .5% of the contract order price. It is understood between the State and the Contractor that such sum shall be treated as liquidated damages and not as a penalty, and that the State may withhold from the Contractor's compensation such sums as liquidated damages.

**ASBESTOS**

Should asbestos be encountered during the performance of the contract, the Contractor shall stop working in the asbestos environment and contact OTS immediately.

**ASSIGNMENT**

The Contractor shall not assign any interest in the contract by assignment, transfer, or novation without prior written consent of the State. This provision shall not be construed to prohibit the Contractor from assigning their 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.

**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 the contract.

Contractor agrees to protect, defend, indemnify, save, and hold harmless, the State of Louisiana, all State Departments, Agencies, Boards and Commissions, its officers, agents, servants, employees, and volunteers, from and against any and all claims, damages, expenses, and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur, or in any way grow out of, any act or omission of Contractor, its agents, servants, and employees, or any and all costs, expenses and/or attorney fees incurred by Contractor as a result of any claims, demands, suits or causes of action, except those claims, demands, suits, or causes of action arising out of negligence



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of the State of Louisiana, all State Departments, Agencies, Boards, Commissions, its officers, agents, servants, employees and volunteers.

Contractor agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, suits, or causes of action at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claims, demands, suits, or causes of action are groundless, false or fraudulent.

The Contractor shall 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 by Contractor under their bid response and the contract, 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 the Contractor, at their 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) the State's unauthorized modification or alteration of a Product, Material, or Service; (ii) the State's use of the Product, Material, or Service in combination with other Products, Materials, or Services not furnished by Contractor; or (iii) the 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, the Contractor shall have the right, at its own expense and sole discretion as the State's exclusive remedy to take action no later than six (6) months after the issuance of an injunction 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. Any injunction that is issued against the State which prevents the State from utilizing the Contractor's product in excess of six (6) months and for which the Contractor has not obtained for the State or provided to the State one of the alternatives set forth in the foregoing sentence is cause for the State to terminate the Contract. In the event of such termination, the State will not be obligated to compensate the Contractor for any costs incurred by the Contractor.

For all other claims against the Contractor where liability is not otherwise set forth in the contract as being "without limitation," and regardless of the basis on which the claim is made, the Contractor's





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liability for direct damages, shall be the greater of \$100,000, the dollar amount of the contract, or two (2) times the charges for Products, Materials, or 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 the 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.

#### **INSURANCE TYPES AND AMOUNTS**

The Contractor shall purchase and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

#### **MINIMUM SCOPE AND LIMITS OF INSURANCE**

##### **WORKERS COMPENSATION**

Workers Compensation insurance shall be in compliance with the Workers Compensation law of the State of the Contractor's headquarters. Employers Liability is included with a minimum limit of \$500,000 per accident/per disease/per employee. If work is to be performed over water and involves maritime exposure, applicable LHWCA, Jones Act, or other maritime law coverage shall be included and the Employers Liability limit increased to a minimum of \$1,000,000. A.M. Best's insurance company rating requirement may be waived for workers compensation coverage only.

##### **COMMERCIAL GENERAL LIABILITY**

Commercial General Liability insurance, including Personal and Advertising Injury Liability, shall have a minimum limit per occurrence of \$1,000,000 and a minimum general aggregate of \$2,000,000. The Insurance Services Office (ISO) Commercial General Liability occurrence coverage form CG 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. Claims-made form is unacceptable.

##### **AUTOMOBILE LIABILITY**

Automobile Liability Insurance shall have a minimum combined single limit per occurrence of \$1,000,000. ISO form number CA 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. This insurance shall include third-party bodily injury and property damage liability for owned, hired and non-owned automobiles.





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**PROFESSIONAL LIABILITY (ERROR & OMISSIONS)**

Professional Liability (Error & Omissions) insurance, which covers the professional errors, acts, or omissions of the Contractor, shall have a minimum limit of \$1,000,000. Claims-made coverage is acceptable. The date of the inception of the policy must be no later than the first date of the anticipated work under this contract. It shall provide coverage for the duration of this contract and shall have an expiration date no later than 30 days after the anticipated completion of the contract. The policy shall provide an extended reporting period of not less than 24 months, with full reinstatement of limits, from the expiration date of the policy.

**DEDUCTIBLES AND SELF INSURED RETENTIONS**

Any deductibles or self-insured retentions must be declared to and accepted by the Agency. The Contractor shall be responsible for all deductibles and self-insured retentions.

**OTHER INSURANCE PROVISIONS**

The policies are to contain, or be endorsed to contain, the following provisions:

**GENERAL LIABILITY AND AUTOMOBILE LIABILITY COVERAGES**

The Agency, its officers, agents, employees and volunteers shall be named as an additional insured as regards negligence by the contractor. ISO Form CG 20 10 (current form approved for use in Louisiana), or equivalent, is to be used when applicable. The coverage shall contain no special limitations on the scope of protection afforded to the Agency.

The Contractor's insurance shall be primary as respects the Agency, its officers, agents, employees and volunteers. Any insurance or self-insurance maintained by the Agency shall be excess and non-contributory of the Contractor's insurance.

Any failure of the Contractor to comply with reporting provisions of the policy shall not effect coverage provided to the agency, its officers, agents, employees and volunteers.

The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the policy limits.

**WORKERS COMPENSATION AND EMPLOYERS LIABILITY COVERAGE**

The insurer shall agree to waive all rights of subrogation against the Agency, its officers, agents, employees and volunteers for losses arising from work performed by the Contractor for the Agency.



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**ALL COVERAGES**

Coverage shall not be canceled, suspended, or voided by either party (the Contractor or the insurer) or reduced in coverage or in limits except after 30 days written notice has been given to the Agency. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications shall comply with the standard cancellation provisions in the Contractor's policy.

Neither the acceptance of the completed work nor the payment thereof shall release the Contractor from the obligations of the insurance requirements or indemnification agreement.

The insurance companies issuing the policies shall have no recourse against the Agency for payment of premiums or for assessments under any form of the policies.

Any failure of the Contractor to comply with reporting provisions of the policy shall not affect coverage provided to the Agency, its officers, agents, employees and volunteers.

**ACCEPTABILITY OF INSURERS**

All required insurance shall be provided by a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located. Insurance shall be placed with insurers with an A.M. Best's rating of **A:VI or higher**. This rating requirement may be waived for workers compensation coverage only.

If at any time an insurer issuing any such policy does not meet the minimum A.M. Best rating, the Contractor shall obtain a policy with an insurer that meets the A.M. Best rating and shall submit another Certificate of Insurance as required in the contract.

**VERIFICATION OF COVERAGE**

Contractor shall furnish the Agency with Certificates of insurance reflecting proof of required coverage. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Certificates are to be received and approved by the Agency before work commences and upon any contract renewal thereafter.

In addition to the Certificates, Contractor shall submit the declarations page and the cancellation provision endorsement for each insurance policy. The Agency reserves the right to request complete certified copies of all required insurance policies at any time.

Upon failure of the Contractor to furnish, deliver and maintain such insurance as above provided, the contract, at the election of the Agency, may be suspended, discontinued or terminated. Failure of the Contractor to purchase and/or maintain any required insurance shall not relieve the Contractor from any liability or indemnification under the contract.



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**SUBCONTRACTORS**

Contractor shall include all subcontractors as insureds under its policies OR shall be responsible for verifying and maintaining the Certificates provided by each subcontractor. Subcontractors shall be subject to all of the requirements stated herein. The Agency reserves the right to request copies of subcontractor's Certificates at any time.

**WORKERS COMPENSATION INDEMNITY**

In the event Contractor is not required to provide or elects not to provide workers compensation coverage, the parties hereby agree that Contractor, its owners, agents and employees will have no cause of action against, and will not assert a claim against, the State of Louisiana, its departments, agencies, agents and employees as an employer, whether pursuant to the Louisiana Workers Compensation Act or otherwise, under any circumstance. The parties also hereby agree that the State of Louisiana, its departments, agencies, agents and employees shall in no circumstance be, or considered as, the employer or statutory employer of Contractor, its owners, agents and employees. The parties further agree that Contractor is a wholly independent contractor and is exclusively responsible for its employees, owners, and agents. Contractor hereby agrees to protect, defend, indemnify and hold the State of Louisiana, its departments, agencies, agents and employees harmless from any such assertion or claim that may arise from the performance of this contract.

**INDEMNIFICATION/HOLD HARMLESS AGREEMENT**

Contractor agrees to protect, defend, indemnify, save, and hold harmless, the State of Louisiana, all State Departments, Agencies, Boards and Commissions, its officers, agents, servants, employees, and volunteers, from and against any and all claims, damages, expenses, and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur, or in any way grow out of, any act or omission of Contractor, its agents, servants, and employees, or any and all costs, expenses and/or attorney fees incurred by Contractor as a result of any claims, demands, suits or causes of action, except those claims, demands, suits, or causes of action arising out of the negligence of the State of Louisiana, all State Departments, Agencies, Boards, Commissions, its officers, agents, servants, employees and volunteers.

Contractor agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, suits, or causes of action at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claims, demands, suits, or causes of action are groundless, false or fraudulent.