

## ATTACHMENT A

Contract # 4400031157

Contract Title: Promethean Brand Name Peripherals - SW

### SPECIAL TERMS AND CONDITIONS

#### 1. SCOPE

STATEWIDE CONTRACT FOR PROMETHEAN BRAND NAME COMPUTER PERIPHERALS.

All items to be furnished must be the manufacturer's current state-of-the-art and must be certified to be in current new production. All items delivered under this contract must be new. Refurbished items are not acceptable for new purchases.

All items furnished, including hardware components within any system configuration, must be the brand specified.

#### 2. CONTRACTORS RESPONSIBILITIES

Any peripheral devices such as printers, scanners, and other items of significant cost must be legally labeled as the brand name specified in this contract. In certain cases, this would require that there be a legal agreement between the original equipment manufacturer and the private label distributor on file with the Office of State Procurement, allowing the private label distributor to label and market the product as the brand specified. \*

- Example: On a contract for ABC Brand Name Peripherals, a system could not include a monitor labeled "DEF" or a printer labeled "GHI". An agreement would have to exist which would allow ABC Company to market these products and label them as ABC Brand.

**\*In the case where items require being legally relabeled as the brand name specified in this contract, the discounted price offered for those items cannot exceed the original equipment manufacturer's published price.**

During the course of a contract where the items are legally relabeled as the brand name specified in this contract, the Contractor shall not be allowed to substitute a different OEM product under an existing contract product number.

- Example: On a contract for ABC Brand Name Peripherals, if an ABC #123 is presented to the Office of State Procurement as a legally relabeled product, for which the OEM product is XYZ #456, then the contractor shall not substitute a different OEM product for ABC #123.

#### 3. CONFIGURATION DOLLAR LIMITS

The following configuration limits will apply to this contract.

- Peripherals per unit cost should not exceed \$50,000 each

For the purpose of this contract, "Configuration" is defined as "a total system configuration. This may include more than one model or part number (or SKU), or a combination of hardware, software, and configuring of the system to make the system work."

Total purchase order amount shall not exceed \$1,000,000. Procurements shall not be artificially divided to circumvent the \$1,000,000 threshold. (NOTE: The \$1,000,000 is a per purchase order limit and is not a limit on the annual amount that can be purchased from this contract.)

#### **4. COOPERATIVE PURCHASE**

It is the intent of the Office of State Procurement (OSP) to accommodate cooperative purchasing in this contract.

As described below, Political Subdivisions of the State, Quasi State Agencies, External Procurement Units, and Agencies of the United States Government are to be authorized (potential) users of this contract subject to the pricing and terms set forth in this contract.

- Political Subdivisions of the State include, but are not limited to, parish governments, municipal governments, school districts, human service districts, local governments and public utilities.
- Quasi State Agencies include, but are not limited to, non-profit or for-profit organizations created by the State of Louisiana or any Political Subdivision or Agency thereof, or any special district or authority, or unit of local government, to perform a public purpose.
- External Procurement Units include, but are not limited to, buying organizations not located in the State of Louisiana, which, if located in the State, would qualify as a public procurement unit.

The current list of approved cooperating purchasing entities (including Political Subdivisions, Quasi State Agencies and External Procurement Units) is maintained and regularly updated on the OSP website at: <https://www.doa.la.gov/doa/osp/agency-resources/osp-purchasing/approved-quasi-units/> and may be used as a reference.

The Contractors may prospectively choose to partially or entirely 'opt-out' of accommodating cooperative purchasing for such contract by sending formal written notification of same to the Office of State Procurement. This notification should clearly specify which individual type(s) of cooperative purchasing entities the Contractor is choosing to not allow to participate in contract cooperative purchasing. Any purchase orders received by the contract-holder from cooperative purchasing entities prior to the contract-holder's opt-out notification to OSP must be honored in accordance with this contract.

#### **5. F.O.B.**

Destination: All prices and terms shall be net.

#### **6. QUANTITIES**

This is an open-ended requirements contract.

#### **7. INCREASE/DECREASE**

In the event a greater or lesser quantity is needed, the right is reserved by the State of Louisiana to increase or decrease the amount.

#### **8. DELIVERY**

Deliver to any Agency of the State government eligible by State statute and/or authorized to purchase from this contract. Delivery is to be made upon the issuance of a purchase order.

The Contractor will have access to an adequate supply of all items in order to meet deliveries of not more than 30 business days.

#### **9. RISK OF LOSS/PASSAGE OF TITLE**

Title to the equipment purchased under this contract shall pass from the Contractor to the State on the date of installation for Contractor-installed equipment or on the date of delivery for State-installed equipment. Prior to the passage of title all risk of loss or damage shall be on the Contractor.

#### **10. TERMS AND CONDITIONS**

This contract contains all terms and conditions with respect to the commodities herein.

The purchase order is the only binding document to be issued against this contract. Signing of Vendor's preprinted forms is not allowed.

#### **11. ORDERS**

All State Agencies are directed to issue contract purchase orders for a supply of the items required, as and when needed. Political Subdivisions of the State and Quasi State Agencies who have been authorized to purchase from contracts made by the Office of State Procurement, are directed to issue their regular purchase orders directly to the supplier, making reference to this contract and line item numbers.

#### **12. PRICES**

Prices shall be complete, including transportation/freight charges prepaid by the Contractor to the destination, inside delivery, unpacking, assembly of all components and removal of all associated debris from premises.

#### **13. INVOICE**

Invoices will be submitted by the Contractor to the Using Agency as indicated on the purchase order and the invoice should refer to the delivery ticket number, delivery date, purchase order number, quantity, unit price, net discount and delivery point. A separate invoice for each order delivered and accepted should be submitted by the Contractor in duplicate directly to the accounting department of the Using Agency. Invoices shall show the amount of any cash discount and shall be submitted on the Contractor's own invoice form.

Using Agencies are directed to pay the Contractor upon presentation of a properly executed invoice after goods have been received, inspected and accepted. Invoices will be paid within 30 days of receipt of a properly executed invoice, or receipt of goods, whichever is later. Payment will be made on the basis of unit price net discount as listed in this contract or the invoiced price, whichever is lower. Such price and payment will constitute full compensation for furnishing and delivering the requested contract commodities. In no case will the Using Agency refuse to make partial payments to the Contractor although all items have not been delivered. This payment in no way relieves the Contractor of his responsibility to effect shipment of the balance of the order.

**PAYMENTS WILL BE MADE TO THE VENDOR AND TO THE ADDRESS AS SHOWN ON THE PURCHASE ORDER. ADVANCED PAYMENTS WILL NOT BE ALLOWED IN THIS CONTRACT.**

#### **14. LATE PAYMENTS**

Interest due by a State Agency for late payments shall be in accordance with La. R.S. 39:1695 at the rates established in La. R.S. 13:4202.

## 15. RENEWAL

At the option of the Office of State Procurement and acceptance by the Contractor, this contract may be extended for one additional 12 month period at the same discount structure, terms and conditions. Contract not to exceed 36 months.

## 16. USAGE/REPORTING REQUIREMENTS

Brand Name Contracts for Computer Peripherals are expected to have **\$50,000.00** usage annually. This usage amount may be waived in whole or in part due to extenuating circumstances, in the State's best interest. The Office of State Procurement will consider contract purchases from State Agencies, Quasi State Agencies and Political Subdivisions. The inability or failure to timely produce usage reports evidencing adequate sales may result in the cancellation of your brand name contract for a period of 2 years.

### Contract Usage Reports:

The Contractor shall submit detailed contract usage reports quarterly to the State Procurement Analyst (SPA) for this contract in accordance with the below schedule. Initiation and submission of the quarterly reports to the SPA is the responsibility of the Contractor without prompting or notification by the SPA. If these reports are not submitted in a timely manner, the Office of State Procurement (OSP) shall have the right to terminate this contract.

The specific usage report content, scope, and format requirements are available on the OSP website under Vendor Resources/Vendor Forms: <https://www.doa.la.gov/oa/osp/vendor-resources/>.

In addition, the person's name who compiled the report and their contact information shall be provided. OSP reserves the right to request copies of any purchase orders issued against this contract.

The usage reports shall be submitted utilizing this format or an equivalent format that has been pre-approved by OSP.

Schedule for submittal of usage reports:

<u>Quarter</u>	<u>Payment Period</u>	<u>Payment Due Date</u>
First Quarter	July 1 through September 30	October 31
Second Quarter	October 1 through December 31	January 31
Third Quarter	January 1 through March 31	April 30
Fourth Quarter	April 1 through June 30	July 31

## 17. Administrative Fees:

The Contractor shall pay a **1%** administrative fee to the State of Louisiana, Office of State Procurement (OSP) in exchange for the management and facilitation of this contract. The calculation of the administrative fee includes any entity receiving contract pricing resulting from the awarded contract. The administrative fee shall be submitted quarterly and shall be based on the total net (gross sales minus returns, credits and deductions) sales made to entities located in the State of Louisiana under this contract. Initiation and submission of the administrative fee to OSP is the responsibility of the Contractor without prompting or notification by the State Procurement Analyst (SPA). If these administrative fees are not submitted in a timely manner, OSP shall have the right to terminate this contract.

The check is to be made payable to: Louisiana DOA-Office of State Procurement. The check is to be mailed or sent through a courier service to the following address: Office of State Procurement, Attn: OSP Receivables Specialist,

1201 North 3rd Street, Claiborne Building-Suite 2-160, Baton Rouge, LA 70802. Payment shall be made in accordance with the following schedule:

<u>Quarter</u>	<u>Payment Period</u>	<u>Payment Due Date</u>
First Quarter	July 1 through September 30	October 31
Second Quarter	October 1 through December 31	January 31
Third Quarter	January 1 through March 31	April 30
Fourth Quarter	April 1 through June 30	July 31

**NOTE: THE CONTRACTOR SHALL INDICATE STATE CONTRACT NUMBER 4400031157 ON THE REMITTANCE. WHEN SUBMITTING ONE REMITTANCE FOR MORE THAN ONE CONTRACT, THE CONTRACTOR SHALL INDICATE ALL STATE CONTRACT NUMBERS AND THE AMOUNT FOR EACH.**

## **18. CATALOG CONTRACTS**

To participate in catalog contracts the Contractor must maintain a web presence of their catalog through a universal locator (URL) linked to the Office of State Procurement's Web page, satisfy various reporting requirements, and satisfy any other requirements of the State's program, including third party audit.

Information and guidelines for these catalog contracts can be obtained from our website, <https://www.doa.la.gov/osp/vendor-resources/>

The Contractor will be given an option to participate in the catalog contract program with the State or continue with the manual process for updating contracts once established.

**Definition:** La. R.S. 1556(22) Defines "Established Catalog Price" as the Price included in a catalog, price list, schedule, or other form that:

- a. Is regularly maintained by a manufacturer or Contractor.
- b. Is either published or otherwise available for inspection by customers, and
- c. States prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for the supplies or services involved.

## **19. INSTALLATION**

Installation is limited to the initial set-up and initial diagnostics of equipment and peripherals purchased from the contract. Installation is to be used only at the time of the purchase of the component(s) from the state contract. Installation is not to be used for configuration or reconfiguration of network equipment, installation or rearrangement of in-building or outside wiring/cabling nor any other fashion.

On-Site Installation \$ 220 per hour per technician

The per hour charge will be the total charge allowed per technician. The Contractor may not charge a separate, additional amount for travel nor include it in calculating total installation time.

The Contractor agrees to provide customer with at least one copy of all instructive material necessary for the effective operation of the purchased equipment, at no additional cost to all subsequent updates and corrections.

## 20. SERVICE/HOT LINE

The Contractor shall be available for consultation service through use of a "Hot Line" telephone number.

615 - 888 - 7922  
(Area Code)

It is mandatory for the Contractor to render prompt service to the Agencies throughout the State. Services of the Contractor shall include calling on Agencies, examining their needs and advising them as to the proper types and selection of equipment best suited to their particular application and/or furnishing technical information at the user site when needed. Accordingly, the Contractor must have at least one representative located in the State of Louisiana to fulfill these needs, excluding the support from the Manufacturer. If not provided below, the name of the representative must be submitted upon request. In the event one representative is found insufficient to meet the needs of the State of Louisiana, the Contractor will be required to assign additional personnel or face cancellation of this contract.

### REPRESENTATIVE AND LOCATION:

Trafera LLC.  
2550 University Avenue West Suite 416-S  
Saint Paul, MN 55114

## 21. WARRANTY

The Contractor shall provide the standard warranty offered by the Manufacturer for the equipment bid, except, that the warranty at a minimum shall be for a term of at least 1 year commencing on the date of satisfactory installation for Contractor-installed equipment, or on the date of delivery for State-installed equipment, and that the warranty includes all repairs and replacement at no cost to the State. In addition, if a unit fails within 7 days of satisfactory installation (if vendor-installed) or within 7 days of delivery (if State-installed), the entire unit will be replaced by the Contractor unless the standard manufacturer's warranty provides for repair of the unit, in which case, the Contractor may provide on-site repair service at no additional cost, to the extent that the standard manufacturer's warranty differs from the foregoing minimum requirements for the State required warranty, the State's minimum requirements shall prevail. The State will accept any warranty that exceeds these minimum requirements.

The above stated warranties shall be voided and shall terminate if the equipment system components are modified or altered by anyone other than the authorized Contractor personnel.

Any damages to the original equipment caused by State-added components shall void the warranty, and repair of said unit becomes the responsibility of the State.

Re-certification of warranty shall then be negotiated between the State and the Contractor. The warranty does not cover defects or damage not caused or occasioned by the Contractor.

The State/Contractor may verify machine condition or warranty through removal of any or all of the components added following initial procurement of the system.

Examples of "unit" are a keyboard, a monitor, a printer, a system unit as delivered.

### **23. TECHNICAL SUPPORT EXPERIENCE**

In order for the State of Louisiana to ensure quality of service for any Brand Name Peripheral, the Contractor must meet the following:

1. The Contractor of a Brand Name State Contract may use a third party warranty service provider when demand for support or repair is greater than that which the Contractor's "in-house" support team can provide. At no time does this relieve the contract vendor of his responsibility to any and all requirements that the Office of State Procurement has in place for Brand Name Peripheral Contracts. Although third party warranty service providers are acceptable, this is not the preferred method of warranty repair and support. However, if a third party warranty provider(s) is utilized, it is incumbent on the contract vendor to provide evidence of the designated service provider's compliance to number 2 below.
2. The Contractor or the designated third party service provider(s) shall utilize A+ certified service technicians as recognized by the Computing Technology Industry Association or equivalent certification, or manufacturer's trained service technicians to fulfill the warranty and service needs of contract equipment. It is preferred that the Contractor or the designated third party service providers be recognized as an A+ Authorized Service Center by the Computing Technology Industry Association or have equivalent certification. Manufacturer's training must be for the brand name equipment as specified. The Contractor is required to furnish the Office of State Procurement proof of all training. All support personnel must have a minimum of 1 year of hands-on technical experience on the same type of equipment.

### **23. CONTRACTOR'S RESPONSIBILITY**

#### **Price Reductions:**

During the course of this contract, any price reduction in the Manufacturer's Published Prices must be immediately extended to the State by the Contractor. Failure to offer the benefit of these price reductions to the State within 2 weeks after general announcement may result in the cancellation of this contract. These price reductions must be granted on any order not shipped. The Contractor must maintain a list of equipment on order and be able to provide a list to the Office of State Procurement within 48 hours of the request.

#### **Consistent Component Supply:**

The Contractor must agree and commit to component consistency within a product line. Specifically, but not limited to, enhance, peripheral accessories and supplies. Upgrades to each will be a normal part of the process.

#### **Substitutes:**

Only brand names and numbers stated in this contract are approved for delivery under this contract and any substitution must receive prior written approval of the Office of State Procurement.

### **24. CONTRACT REVISIONS**

Requests for revisions to this contract shall be addressed to the Office of State Procurement and shall refer to the contract item number (with brief explanation of request). Distributor vendor changes, price reductions and item deletions may be requested at any time during the contract period.

The Contractor must immediately notify the Office of State Procurement when any dealer on this contract is terminated, relocated, or added. All orders placed with dealers prior to receipt of such notification to the Office of State Procurement must be honored.

**Price List Changes:** The price list bid shall remain firm and effective for the first three months of the contract term. Price list changes will be considered during the remainder of the contract period and during any contract renewals.

The original price list discount awarded shall remain constant throughout the duration of this contract and renewals. Deeper discounts will be accepted.

Requests for price list changes must be submitted in writing by the Contractor to the Office of State Procurement and must be supported by sufficient documentation such as manufacturer's price increase, significant changes in the published market indicators for the industry, certified raw material cost data and/or any other substantiating information that may be requested by OSP. Upon receipt of the price escalation request, OSP reserves the right to accept the request, request additional information, negotiate the proposed increase, or reject the request outright. Any decision by the Office of State Procurement to grant or decline a request will be at the Office of State Procurement's sole discretion and the Office of State Procurement's decision shall be final.

Price list changes will not be effective until approval has been granted in writing by OSP. No retroactive adjustments to the price list will be allowed.

The Contractor shall immediately notify OSP of all manufacturer's price decreases and the State shall receive the full benefit of such decreases, effective the date in the manufacturer's announcement.

**Contract Additions:** Requests for new item additions shall be made in accordance with the "Procedures for the Establishment and Continuance of a Brand Name Microcomputer Contract", most current edition at time of bid opening. The procedures may be obtained from our website, <https://www.doa.la.gov/oa/osp/vendor-resources/>. Any new items added during this contract shall be offered at a discount equal to or greater than the minimum discount(s) awarded. **For any items added to a contract that require being legally relabeled as the brand name specified in this contract, the Contractor may be required to submit the original manufacturer's published price for those items, in addition to providing the published price list or type notarized listing of prices for the brand specified in this contract. The contract price for these items cannot exceed the original equipment manufacturer's published price.**

Revisions will become effective upon approval by the Office of State Procurement.

## 25. CONTRACT UTILIZATION

This contract has been designated as a Louisiana Pricing Schedule ("LaPS"). The State intends to use the following process before placing orders under this contract, and the Contractor explicitly understands and agrees to the use of this process before accepting orders under this contract. Where multiple LaPS contracts exist for functionally equivalent products and/or services and the procurement exceeds the defined maximum value for small purchases established by executive order of the Governor, all eligible users of these contracts will utilize the following procedures:

- 1) Prepare a Request for Responses (an informal process used to make a best value determination) that includes, if applicable:
  - A) Performance-based statement of work that includes such things as:
    - The work to be performed
    - Location of work
    - Period of Performance
    - Deliverable schedule
    - Applicable performance standards
    - Acceptance criteria
    - Any special requirements (e.g., security clearances, special knowledge, etc.)
    - The products required (using a generic description of products and functions whenever possible).

- B) If necessary or applicable, a request for submittal of a project plan for performing the task and information on the Contractor's experience and/or past performance performing similar tasks.
  - C) A best value determination is one that considers, in addition to underlying contract pricing, such factors as:
    - Probable life of the item selected
    - Environmental and energy efficiency considerations
    - Technical qualifications
    - Delivery terms
    - Warranty
    - Maintenance availability
    - Administrative costs
    - Compatibility of an item within the user's environment
    - User's familiarity with the item or service
  - D) A request for submittal of a firm-fixed total price for labor and/or products which are no higher than prices in the LaPS contract.
- 2) Submit the Request for Response to at least three LaPS contract holders, whenever available, offering functionally equivalent products and/or services that will meet the Agency's needs.
- 3) Evaluate responses and select the Contractor to receive the order:
- A) After responses have been evaluated, the order shall be placed with the Contractor that represents the best value that meets the Agency's needs. The Ordering Agency should give preference to small entrepreneurs or small and emerging businesses when two or more Contractors can provide the services and/or products at the same firm-fixed price.
  - B) The Ordering Agency shall document in the procurement file the evaluation of the Contractors' responses that formed the basis for selection. The documentation shall identify the Contractor from which the services and/or products were purchased, the services and/or products purchased, and the cost of the resulting purchase order.
  - C) Purchases shall not be artificially divided to avoid the requirements of this section when recurring requirements for same products are known.

## 26. 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 contract.

The 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 property caused by the 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.

The 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 the Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of the Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require the 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) 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 the Contractor; (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 the 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 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 noninfringing 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 this Contract. Any injunction that is issued against the State which prevents the State from utilizing the Contractor's product in excess of 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 this 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 liability **for direct damages, shall be the greater of \$100,000, the dollar amount of this Contract, or two times the charges for services rendered by the Contractor under this 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 to 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.

## **27. INSURANCE REQUIREMENTS FOR CONTRACTORS**

The Contractor shall purchase and maintain for the duration of this 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.

### **A. Minimum Scope and Limits of Insurance**

#### **1. 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 \$1,000,000 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. A.M. Best's insurance company rating requirement may be waived for workers compensation coverage only.

**2. Commercial General Liability**

Commercial General Liability insurance, including Personal and Advertising Injury Liability and Products and Completed Operations, 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.

**3. 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.

**B. 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.

**C. Other Insurance Provisions**

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

1. Commercial General Liability and Automobile Liability Coverages

- a. 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 (for ongoing work) AND CG 20 37 (for completed work) (current forms approved for use in Louisiana), or equivalent, are to be used when applicable. The coverage shall contain no special limitations on the scope of protection afforded to the Agency.
- b. The Contractor's insurance shall be primary as respects the Agency, its officers, agents, employees and volunteers for any and all losses that occur under this contract. Any insurance or self-insurance maintained by the Agency shall be excess and non-contributory of the Contractor's insurance.

2. Workers Compensation and Employers Liability Coverage

To the fullest extent allowed by law, 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.

3. All Coverages

- a. All policies must be endorsed to require 30 day written notice of cancellation to the Agency. 10 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. In addition, the Contractor is required to notify the Agency of policy cancellations or reductions in limits.

- b. The acceptance of the completed work, payment, failure of the Agency to require proof of compliance, or the Agency's acceptance of a non-compliant Certificate of Insurance shall not release the Contractor from the obligations of the insurance requirements or indemnification agreement.
- c. 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.
- d. 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.

**D. Acceptability of Insurers**

- 1. 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.
- 2. 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 within 30 days.

**E. Verification of Coverage**

- 1. The 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 or insurance policy renewal thereafter.
- 2. The Certificate Holder shall be listed as follows:  
State of Louisiana  
1201 North Third St. Claiborne Bldg., Suite 2-160  
Baton Rouge, LA 70802
- 3. In addition to the Certificates, the Contractor shall submit the declarations page and the cancellation provision for each insurance policy. The Agency reserves the right to request complete certified copies of all required insurance policies at any time.
- 4. Upon failure of the Contractor to furnish, deliver and maintain such insurance, this 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 this contract.

**F. Subcontractors**

The 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 subcontractors' Certificates at any time.

## **G. Workers Compensation Indemnity**

In the event the Contractor is not required to provide or elects not to provide workers compensation coverage, the parties hereby agree that the 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 the Contractor, its owners, agents and employees. The parties further agree that the Contractor is a wholly independent Contractor and is exclusively responsible for its employees, owners, and agents. The 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.

## **28. ASSIGNMENT**

The Contractor shall not assign any interest in this 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 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.

## **29. 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 this contract for a period of five years from the date of final payment or as required by applicable State and Federal Law. Records shall be made available during normal working hours for this purpose.

## **30. TERMINATION FOR NON-APPROPRIATION OF FUNDS**

The continuation of this contract is contingent upon the continuation of an appropriation of funds by the Legislature to fulfill the requirements of this contract. If the Legislature fails to appropriate sufficient monies to provide for the continuation of a contract or if such appropriation is reduced by the veto of the Governor or by any means provided in the Appropriations Act 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 this contract, this contract shall terminate on the last day of the fiscal year for which funds were appropriated.

## **31. WAIVER CLAUSE**

Waiver of any breach of any term or condition of this 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.

## **33. SEVERABILITY**

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

### **32. 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 products/services called for in this Contract. 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 contract.

### **33. APPLICABLE LAW**

This contract 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 contract shall be in the Nineteenth Judicial District Court, parish of East Baton Rouge, State of Louisiana.

### **34. CONTRACT CONTROVERSIES**

Any claim or controversy arising out of this contract shall be resolved by the provisions of Louisiana Revised Statutes 39:1671-1673.

### **35. CYBERSECURITY TRAINING**

A. In accordance with La. R.S. 42:1267(B)(3) and the State of Louisiana's Information Security Policy, if the Contractor, any of its employees, agents, or subcontractors will have access to State government information technology assets, the Contractor's employees, agents, or subcontractors with such access must complete cybersecurity training annually, and the Contractor must present evidence of such compliance annually and upon request. The Contractor is to use the cybersecurity training course offered by the Louisiana Department of State Civil Service without additional cost.

B. For purposes of this Section, "access to State government information technology assets" means the possession of credentials, equipment, or authorization to access the internal workings of State information technology systems or networks. Examples would include but not be limited to State-issued laptops, VPN credentials to credentials to access the State network, badging to access the State's telecommunications closets or systems, or permissions to maintain or modify IT systems used by the State. Final determination of scope inclusions or exclusions relative to access to State government information technology assets will be made by the Office of Technology Services (OTS).