

ITN 15-0027
ATTACHMENT H
STANDARD CONTRACT TERMS AND CONDITIONS

Citizens expects to include the following terms and conditions in the Contract resulting from the solicitation. Citizens is willing to make reasonable changes to these Standard Terms and Conditions as needed to confirm to industry practices and Vendor's proposed solution. Any questions or issues with these Standard Terms and Conditions may be raised during the Questions period described in Section 1.7 of the ITN, Calendar of Events, or during the Negotiations Phase.

1. Service Warranties and Standards.

- 1.1. General Warranty. Vendor warrants that the Services will be performed and delivered in a professional, first-class manner in accordance with the standards prevailing in the industry. To this end, Vendor will undertake the following actions without additional consideration during the term of this Contract and for one (1) year thereafter: (a) promptly make necessary revisions or corrections to resolve any errors and omissions on the part of Vendor; and (b) confer with Citizens as Citizens deems appropriate for the purpose of interpreting any of the services or information furnished. Acceptance of or payment for the Services by Citizens shall not relieve Vendor of these responsibilities. The warranties and covenants in this paragraph will extend to and bind Vendor's subcontractors, if any.
- 1.2. Ability to Perform. As of the Effective Date, Vendor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain or diminish Vendor's ability to perform the Services or satisfy its contractual obligations. During the term of this Agreement, Vendor shall notify Citizens of any change in circumstances that would in any way diminish Vendor's ability to perform the Services or satisfy its contractual obligations.
- 1.3. Monitoring of Performance. Vendor shall continuously monitor and record its performance to ensure that all of Vendor's responsibilities and obligations hereunder are being met and fulfilled. Citizens may conduct programmatic and other administrative contract monitoring during the term of this Agreement. The purpose of this monitoring is to ensure that all of Vendor's responsibilities and obligations are being met and fulfilled. Such monitoring may include on-site visits, report reviews, invoice reviews, compliance reviews, and a review of any other areas reasonably necessary.
- 1.4. Trained and Qualified Vendor Staff. Vendor warrants that all Vendor Staff shall be properly trained and qualified. Upon request, Vendor shall furnish a copy of all technical certifications or other proof of qualification. All Vendor Staff must comply with all reasonable administrative requirements of Citizens and with all controlling laws and regulations relevant to the Services.
 - 1.4.1. Removal and Replacement of Vendor Staff. Without limiting Citizens' other rights and remedies under this Agreement, including suspension of Services and termination of this Agreement, where any Vendor Staff fails to comply with any of the training or qualification requirements in this Agreement or, in Citizens' determination, is unsuitable for the performance of the Services, Citizens has the right, at Citizens' sole election, to disallow such Vendor Staff from performing the Services. Upon

Citizens' request, Vendor shall promptly provide qualified replacement Vendor Staff reasonably acceptable to Citizens.

1.5. Service Level Standards.

- 1.5.1. Description. In addition to all other requirements in this Agreement, Vendor shall use reasonable and good faith efforts to meet the Service Level Standards. Service Level Standards are TBD upon award to Vendor, but measures may include but are not limited to those found in Section 2.16, Performance Measures of the ITN document.
- 1.5.2. Reports. On a monthly basis, in arrears and no later than the fifteenth (15th) calendar day of the month following the reporting month, Vendor shall provide reports to Citizens describing the performance of the Services as compared to the Service Level Standards. The reports shall be in a form agreed to by Citizens and shall contain no less than the following information: (a) actual performance compared to the Service Level Standard; (b) the cause or basis for not meeting the Service Level Standard; (c) the specific remedial actions Vendor has undertaken or will undertake to ensure that the Service Level Standard will be subsequently achieved; (d) any Performance Credit due to Citizens; and (e) if requested, a rolling six-month Service Level Standard trend report for the Service Level Standard. Vendor and Citizens will meet as often as reasonably requested by Citizens, but no less than monthly, to review Vendor's performance as it relates to the Service Level Standards. If Vendor fails to provide a report for a Service Level Standard in the applicable timeframe, the Service Level Standard shall be deemed to be completely failed for the purposes of calculating a Performance Credit. Vendor shall, without charge, make Citizens' historical Service Level Standard reports available to Citizens upon request.
- 1.5.3. Failure to Meet Service Level Standards. Time is of the essence in meeting the Service Level Standards. If Vendor does not meet a Service Level Standard, Vendor shall issue the applicable Performance Credits as agreed upon herein. The Performance Credits will be issued on Vendor's next invoice to Citizens for the Services. The Performance Credits are intended only to cover the diminished value of a Service that is delivered to Citizens. The acceptance of a Performance Credit does not waive Citizens' right to pursue other remedial actions or claims under this Agreement. To the extent the underlying acts or omissions constitute an event of default under another section of this Agreement, Citizens may declare an event of default under that section. Notwithstanding the issuance of a Performance Credit, Vendor will use its best efforts to minimize the impact or duration of any outage, interruption or degradation of Service. In no case shall Citizens be required to notify Vendor that a Performance Credit is due as a condition of payment of the same.
- 1.5.4. Termination for Repeated Failures. Citizens shall have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement and be entitled to a return of any prepaid fees where Vendor fails to meet any Service Level Standard for four (4) months out of any rolling twelve (12) month period.
- 1.5.5. Temporary Suspension of Service Level Standards. Vendor will be excused for failing to meet any Service Level Standard if and to the extent such failure is excused under Section 15.1, Force Majeure. Vendor shall advise Citizens in writing as soon as possible of any circumstance or occurrence which would excuse or affect Vendor's ability to achieve any of the Service Level Standards. In all such cases, Vendor will continue to make all reasonable efforts to achieve the Service Level

Standards. Suspension of a Service Level Standard shall not excuse Vendor from accumulating data relevant to that Service Level Standard and reporting such data to Citizens as part of the reports.

- 1.5.6. Audits. No more than quarterly, Citizens or Citizens' agent shall have the right to audit Vendor's books, records, server logs and other measurement and auditing tools to verify Service Level Standard achievement and to determine correct payment of any Performance Credit. Where it is determined that any Performance Credit was due to Citizens but not paid, Vendor shall immediately owe to Citizens the applicable Performance Credit.

2. Changes.

- 2.1. Citizens may unilaterally require changes altering, adding to, or deducting from the Services (each, a "Change"), provided that a Change is within the general scope of this Agreement. Citizens will make an equitable adjustment in this Agreement price or delivery date if a Change materially affects the cost or time of performance of the Services. Such equitable adjustments must be accepted in writing by Vendor, which acceptance shall not be unreasonably withheld, delayed or conditioned. The Parties will cooperate in good faith to determine the scope and nature of a Change, the availability of Vendor Staff, the expertise and resources needed to provide such Change, and the time period in which such Change will be implemented.
- 2.2. A Change resulting in an increase or decrease to the Agreement price or the scope of Services must be evidenced by a formal amendment to this Agreement. All other Changes shall be evidence by either a writing signed by the Contract Manager or designee of each Party or a formal amendment to this Agreement.

3. Acceptance and Corrective Action.

- 3.1. Acceptance Period. For all Services provided under this Agreement, Vendor grants to Citizens a thirty (30) day acceptance period ("Acceptance Period") commencing on the date completed Services are delivered to Citizens. Citizens shall have the right to reject the Services, in whole or in part, during the Acceptance Period for Vendor's failure to meet the specifications associated with the delivered Services, with such determination to be made in Citizens' reasonable judgment. At the end of the Acceptance Period, if Citizens has not rejected the Services, the Services shall be deemed to be accepted by Citizens; provided, however, that Citizens' acceptance of the Services shall not be deemed a waiver of any of Citizens' warranty rights as expressly provided in this Agreement.
- 3.2. Opportunity to Cure. Upon being advised of Citizens' rejection of Services within the Acceptance Period, Vendor shall have thirty (30) days to cure any deficiency identified by Citizens. In the event Vendor is unable to cure said deficiency within this thirty (30) day period, Citizens may, in its sole discretion, terminate this Agreement in whole or in part for cause and pursue such other rights and remedies allowable in law or equity. This thirty (30) day cure period applies only to the failure to deliver Services as specified in this Agreement and is a limited exception to the general cure period set forth in Section 10.2, Termination for Cause.
- 3.3. Corrective Action Plan. At any stage during the thirty (30) day cure period provided above, or whenever Citizens identifies a deficiency in Vendor's performance of this Agreement, Citizens may require Vendor to take the following actions:

1. Perform a cause analysis to identify the cause of such deficiency;
2. Provide Citizens with a written plan (the "Corrective Action Plan") detailing the cause of, and procedure for, correcting such deficiency (Citizens will be afforded the time necessary to review and approve the proposed Corrective Action Plan or require Vendor to make revisions).
3. Implement the Corrective Action Plan as approved by Citizens; and
4. Provide Citizens with satisfactory assurance that such deficiency will not reoccur following the completion of the implementation of the Corrective Action Plan.
5. Completion of the cause analysis and implementation of the Corrective Action Plan must occur no later than the time frame as noted in the notice to cure from Citizens, unless otherwise agreed to by Citizens. In the case of a deficiency identified by Citizens during an Acceptance Period, completion of the cause analysis and implementation of the Corrective Action Plan by Vendor must occur before the end of the thirty (30) day cure period provided above, unless otherwise agreed to by Citizens in its sole discretion.
6. If performance deficiencies are not resolved to the satisfaction of Citizens within the prescribed time and if no extenuating circumstances can be documented by the Vendor to Citizens' satisfaction, Citizens may issue a stop work order, issue corrective action, or terminate the Contract with the Vendor. The determination of any extenuating or mitigating circumstances is the exclusive determination of Citizens.
7. Should the Vendor not meet the requirements of the Corrective Action Plan, the Vendor will then be disqualified from the next solicitation and future contracts for all Services.

Citizens may deliver any written notice pursuant to this subsection by U.S. mail, facsimile, electronic mail, or other electronic means. Citizens may also remove Vendor from the ability to provide Services until such time as a deficiency in Vendor's performance is explained and corrected in accordance herewith.

4. Invoices.

Vendor must timely submit all requests for compensation for Services or expenses, where permitted, in sufficient detail for a pre- or post-audit. Vendor shall also submit a copy, marked as duplicate, of the original, legible, signed, dated, page-numbered invoice to Citizens' Contract Manager or designee.

All invoices must be submitted through the appropriate Citizens system for payment processing and must include, at a minimum, the following:

- Agreement/Contract number, if applicable;
- Vendor's name and address;
- Vendor's Federal Employment Identification Number;
- Itemized Services for which compensation is being sought;
- Invoice Date;
- Services period;
- Citizens' Contract Manager's name

Citizens may require any other information from Vendor that Citizens deems necessary to verify any compensation request placed under this Agreement and Vendor agrees that it will provide such information as reasonably requested by Citizens. Payment shall be due net thirty (30) days of Citizens' actual receipt of a complete and undisputed invoice. Where

Citizens submits payment to Vendor net ten (10) days of Citizens' actual receipt of a complete and undisputed invoice, Citizens shall be entitled to reduce the invoiced amount by two-percent (2%) in consideration of Citizens' early payment. Where a submitted invoice is incomplete, such as not containing the information described in this Section, Citizens will return the incomplete invoice to Vendor for correction within thirty (30) days of Citizens' actual receipt of such invoice. Where Citizens reasonably disputes any part of a complete invoice, such as the amount of the compensation request, Citizens shall pay any undisputed portion of the invoiced amount within (30) days of Citizens' actual receipt of the complete invoice and will describe the basis for the disputed portion of the invoiced amount. Where Vendor disagrees with Citizens dispute of any invoice, the Parties shall seek to resolve the dispute in accordance with the Dispute Resolution Process further described in this Agreement. In no case shall Citizens be subject to late payment interest charges where Vendor has submitted an incomplete invoice or where Citizens has reasonably disputed an invoice. Where Vendor fails to submit an invoice within twelve (12) calendar months of the Services for which compensation is being requested, Vendor acknowledges and agrees that any payment due for such Services is forfeited by Vendor for its failure to timely submit an invoice.

5. Deliverables and Work Product.

5.1. Title to Work Product. With the exception of the Pre-Existing Materials described in Pre-Existing Materials, Citizens will have all right, title and interest in and to each Work Product and any derivative works relating thereto (including ownership of copyrights). The use of these Work Products in any manner by Citizens shall not support any claim by Vendor for additional compensation. Each Work Product, and any portion thereof, shall be a "work made for hire" for Citizens pursuant to federal copyright laws. To the extent any of the Work Product is not deemed a work made for hire by operation of law, Vendor hereby irrevocably assigns, transfers, and conveys to Citizens, or its designee, without further consideration all of its right, title, and interest in such Work Product, including all rights of patent, copyright, trade secret, trademark, or other proprietary rights in such materials. Vendor acknowledges that Citizens shall have the right to obtain and hold in its own name any intellectual property right in and to the Work Product. Vendor agrees to execute any documents or take any other actions as may reasonably be necessary, or as Citizens may reasonably request, to perfect or evidence Citizens' ownership of the Work Product. This Section shall survive the termination of this Agreement.

5.2. Pre-Existing Materials.

5.2.1. Citizens acknowledges that, in the course of performing the Services, Vendor may use materials, software, reports, routines, language, instructions, methods, techniques, trade secrets, patents or copyrights that have been previously developed by Vendor or by third parties (collectively, the "Pre-Existing Materials"), and that such Pre-Existing Materials shall remain the sole and exclusive property of Vendor or the third parties. Where Vendor seeks to embody Pre-Existing Materials in the Work Product, Vendor must first obtain written approval from Citizens.

5.2.2. If and to the extent any Pre-Existing Materials of Vendor are embodied or reflected in the Work Product, Vendor hereby grants to Citizens the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to: (a) use, execute, reproduce, display, perform, distribute copies of and prepare derivative works based upon such Pre-existing Materials and any derivative works thereof for Citizens' internal business purposes only; and (b) authorize others to do any or all of the foregoing for Citizens' internal business purposes only.

5.2.3. If and to the extent any Pre-Existing Materials of third parties are embodied or reflected in the Work Product, Vendor shall secure for Citizens an irrevocable, perpetual, non-exclusive, worldwide, royalty-free and fully paid-up right to use, execute, display, and perform such Pre-Existing Materials. Vendor shall secure such right at its expense and prior to incorporating any such Pre-Existing Materials into any Work Product, and such right must include, if practicable, a right to: (a) copy, modify, and create derivative works based upon such Pre-Existing Materials; and, (b) sublicense all or any portion of the foregoing rights to an affiliate or a third party service provider of Citizens. This Section does not apply to standard office software (e.g., Microsoft Office).

5.2.4. The provisions of this Section shall survive the termination of the Agreement.

5.3. Offsets and Credits. Any amounts due from Vendor may be applied by Citizens against any amounts due to Vendor. Any such amounts that are not so applied shall be paid to Citizens by Vendor within thirty (30) days following Citizens' request.

5.4. Travel-related Expenses. Citizens will not reimburse Vendor for travel-related expenses.

5.5. No Additional Charges. Except for the compensation described in the Compensation Schedule and travel-related expenses, if permitted, Citizens shall not be billed for or be obligated to pay to Vendor any charges, expenses, or other amounts for the Services or otherwise.

5.6. Taxes. Citizens is a State of Florida, legislatively created, governmental entity which does not pay federal excise or state sales taxes on direct purchases of tangible personal property. Vendor represents and warrants that it is an independent contractor for purposes of federal, state, and local employment taxes. Vendor agrees that Citizens is not responsible to collect or withhold any federal, state, or local employment taxes, including personal property tax, income tax withholding, and social security contributions, for Vendor or Vendor Staff. Any and all taxes, interest or penalties, including personal property tax or any federal, state, or local withholding or employment taxes, imposed, assessed, or levied as a result of this Agreement shall be paid or withheld by Vendor or, if assessed against and paid by Citizens, shall be immediately reimbursed by Vendor upon demand by Citizens.

6. Indemnification.

6.1. Indemnification. Vendor shall be fully liable for the actions of Vendor Staff and shall fully indemnify, defend, and hold harmless Citizens, and its officers, members of the Board of Governors, agents and employees (each, an "Indemnatee" and collectively, the "Indemnitees") from suits, actions, damages, liabilities, demands, claims, fines, penalties, fees, and costs of every name and description (collectively, "Claims"), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from an Indemnatee arising out of or relating to any act, error or omission, or misconduct of Vendor or Vendor Staff during the performance of this Agreement. The foregoing obligation applies, without limitation, to Claims arising out of or relating to: (a) a violation of federal, state, local, international, or other laws or regulations for the protection of persons or members of a protected class or category of persons; (b) sexual discrimination or harassment based upon any protected characteristic; (c) bodily injury (including death) or damage to tangible personal or real property; (d) breaches of any representations made by Vendor under this Agreement; (e) any claim that any Work Product violates or infringes upon a trademark, copyright, patent, trade secret or intellectual property right; or (f) Vendor's failure to timely

forward a public records request to Citizens for handling.

6.1.1. Vendor's obligations of indemnification with respect to any Claim are contingent upon Citizens (or other Indemnitee) providing Vendor: (a) written notice of the Claim; (b) the opportunity to settle or defend against the Claim at Vendor's sole expense; and (c) assistance in defending against or settling the Claim at Vendor's sole expense. Vendor shall not be liable for any cost, expense, or compromise incurred or made by an Indemnitee in any legal action without Vendor's prior written consent, which shall not be unreasonably withheld.

6.1.2. Notwithstanding anything in this Agreement to the contrary, Vendor shall not indemnify for that portion of a Claim proximately caused by: (a) a negligent act or omission of an Indemnitee; or (b) an Indemnitee's misuse or modification of the Service or Work Product.

6.1.3. The obligations in this Section are separate and apart from, and in no way limit Citizens' rights under any insurance provided by Vendor pursuant to this Agreement or otherwise.

6.1.4. The provisions of this Section shall survive the termination of this Agreement.

6.2. Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY: (A) SPECULATIVE OR REMOTE DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH A BREACH OF THIS AGREEMENT; OR, (B) ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT IN EXCESS OF \$1,000,000. THESE LIMITATIONS APPLY REGARDLESS OF WHETHER THE ACTION OR CLAIM IS BASED IN AGREEMENT, EQUITY, TORT, OR OTHERWISE. THESE LIMITATIONS SHALL NOT APPLY TO: (A) ANY OBLIGATION OF INDEMNIFICATION SET FORTH IN THIS AGREEMENT; (B) ANY CLAIM OR DAMAGE CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT; (C) ANY CLAIM OR DAMAGE TO THE EXTENT COVERED BY AN INSURANCE POLICY REQUIRED IN THIS AGREEMENT; OR (D) ANY CLAIM OR DAMAGE CAUSED BY VENDOR'S BREACH OF ITS OBLIGATIONS OF CONFIDENTIALITY SET FORTH IN THIS AGREEMENT. NOTHING IN THIS SECTION OR IN THIS AGREEMENT SHALL BE CONSTRUED AS A WAIVER OF THE LIMIT ON CITIZENS' LIABILITY FOR TORT CLAIMS UNDER SECTION 768.28, FLORIDA STATUTES. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

7. Insurance. During the term of this Agreement, Vendor will maintain at its sole expense the following insurance, purchased from an insurer licensed to transact business in the State of Florida:

7.1. Workers' Compensation insurance which provides coverage for Vendor's employees or independent contractors' employees, regardless of the state of hire, in at least the minimum statutory limits required by the State of Florida, and Employers' Liability with limits of \$1 million.

7.2. Commercial General Liability with minimum limits of \$1 million per occurrence (to include contractual liability on a blanket basis for liability assumed hereunder) and \$2 million in the aggregate; Citizens shall be named as additional insured in the Commercial General Liability policy.

7.3. Umbrella/Excess General Liability and Auto Liability insurance with minimum limits of \$4

million in the aggregate.

- 7.4. Network Security Liability with data breach coverage limits of \$10 million per occurrence and \$10 million in the aggregate.
- 7.5. Upon execution of this Agreement, Vendor must provide to Citizens a current in-force certificate of insurance evidencing the above coverage limits and subsequent certificates prior to their expiration. Vendor further agrees that it will maintain insurance to cover any indemnity obligation that it has assumed under this Agreement. All policies will include provisions that the insurers waive the rights of recovery or subrogation against Citizens. Citizens shall be exempt from, and in no way liable for, any sum of money which may represent a deductible in any of the aforementioned insurance policies. The payment of such deductible shall be the sole responsibility of Vendor. Unless otherwise agreed in writing by the Contract Administrator, all policies shall require ninety (90) calendar days prior written notice to Citizens of cancellation or change in any coverage.

8. Contract Administration.

- 8.1. Contract Administrator. Citizens shall name a Contract Administrator during the term of this Contract whose responsibility shall be to maintain this Agreement. All legal notices and contractual documents shall be sent to the Contract Administrator in addition to the Citizens' Contract Manager named below. As of the Effective Date, the Contract Administrator is:

Lori Newman, Vendor Management Office
2101 Maryland Circle
Tallahassee, Florida 32303
850-513-3795
Lori.Newman@citizensfla.com

Citizens shall provide written notice to Vendor of any changes to the Contract Administrator; such changes shall not be deemed Agreement amendments.

- 8.2. Contract Managers. Each Party will designate a Contract Manager during the term of this Agreement whose responsibility shall be to oversee the Party's performance of its duties and obligations pursuant to the terms of this Agreement. As of the Effective Date, Citizens' and Vendor's Contract Managers are as follows:

Citizens' Contract Manager

Keri Dennis
Citizens Property Insurance
7215 Financial Way
Jacksonville, FL 32256
904-208-7553
Keri.Dennis@citizensfla.com

Vendor's Contract Manager

[Name]
[Company Name]
[Address]
[City, State Zip]
[Phone]
[Email]

Citizens and Vendor shall provide written notice to each other of any changes to the Contract Manager; such changes shall not be deemed Agreement amendments.

9. **Service Requirements.**

- 9.1 **Temporary Suspension of Services.** Citizens may, in its sole discretion, temporarily suspend all or certain portions of the Services at any time by providing written notice to Vendor. Upon receiving a suspension notice, Vendor shall cease performing the Services in accordance with the suspension notice. Within ninety (90) days after Citizens provides the suspension notice, or any longer period agreed to by Vendor, Citizens shall either: (a) issue a notice authorizing resumption of the Services, at which time the Services shall resume; or (b) exercise its right under to terminate this Agreement without cause. Nothing in this Section allows Citizens to withhold or delay any payment for Services satisfactorily performed prior to the suspension. However, Vendor shall not be entitled to any additional compensation for the suspension of Services.

10. **Agreement Termination; Transition Assistance.**

- 10.1. **Termination without Cause.** By thirty (30) days advance written notice, Citizens may terminate this Agreement in whole or in part, at its sole discretion and without the need to specify a reason for termination. The actual date of termination of this Agreement will be thirty (30) days from the date of the written notice, or as otherwise specified in Citizens' written notice (the "Termination Date"). Where Citizens elects to terminate this Agreement in part, Vendor shall continue to provide Services for any portion of the Agreement not terminated. Vendor shall be entitled to payment for Services satisfactorily performed through the Termination Date but shall not be entitled to recover any cancellation charges or damages, including lost profits or reliance damages. Vendor shall not have a reciprocal right to terminate without cause; it being understood that Citizens' payment for Services forms the consideration for Vendor not having this right. In the event of Citizens' termination without cause, Citizens, at Citizens' sole election, may also require Vendor to provide the Transition Assistance as further described in this Agreement.
- 10.2. **Termination for Cause.** Either Party may terminate this Agreement if the other Party fails to honor its material obligations under this Agreement. Unless otherwise provided herein, before terminating this Agreement, the Party that believes the other Party is failing to perform this Agreement shall notify the other Party, in writing, of the nature of the failure to perform and provide a reasonable time certain for correcting the failure (such time should not generally be less than ten (10) days from receipt of the notice). If the other Party does not correct its failure to perform within the time provided, and its failure is not legally excusable, the Party claiming failure to perform may thereafter notify the other Party, in writing, that it considers the other Party in default and may terminate this Agreement and pursue any remedies allowed in law or equity. Instead of terminating this Agreement in whole, Citizens may elect to terminate this Agreement in part, in which case Vendor shall continue to provide Services for any portion of the Agreement not terminated. If after termination it is determined that Vendor was not in default, or that the default was excusable, the rights and obligations of the Parties shall be the same as if the termination had been issued without cause under Section 10.1, Termination without Cause.
- 10.3. **Transition Assistance.** At any time prior to the Termination Date, Citizens may request Vendor to provide transition assistance services ("Transition Assistance"). Vendor shall provide such Transition Assistance until Citizens notifies Vendor that Citizens no longer requires such Transition Assistance, which shall in no event be more than one-hundred and eighty (180) days following the Termination Date.

10.3.1. Transition Assistance shall mean any transition services, functions, or responsibilities that are ordinarily or customarily provided to a purchaser to ensure that the services provided to that purchaser by a vendor are fully transitioned in a smooth and efficient manner to the purchaser or to a successor vendor. Transition Assistance includes the development and implementation of a detailed transition plan, if requested. To the extent the Transition Assistance will involve a successor vendor, Vendor agrees that it will cooperate with such successor vendor. As reasonably required by Vendor, Citizens shall cause any successor vendor to execute Vendor's non-disclosure agreement.

10.3.2. Transition Assistance rendered before the Termination Date shall be provided at no additional cost to Citizens. Transition Assistance rendered after the Termination Date shall be provided at the rates negotiated by the Parties prior to the rendering of the post-termination Transition Assistance, which rates shall not exceed the standard market rates Vendor charges to government entities for comparable services; provided however, that if Citizens terminates this Agreement because of a breach by Vendor, then the post-termination Transition Assistance shall be provided at no cost to Citizens. Vendor may withhold Transition Assistance after the Termination Date if Citizens does not provide reasonable assurance that the charges for such Transition Assistance will be paid to Vendor.

11. Disputes.

11.1. Dispute Resolution Process. Vendor acknowledges that Citizens is not an agency for purposes of the Florida Administrative Procedure Act, Chapter 120, Florida Statutes. Prior to commencing any litigation relating to this Agreement, the Parties agree that they will attempt to resolve any dispute through non-binding mediation. The Parties agree that, if a disagreement arises as to the terms or enforcement of any provision of this Agreement, each Party shall in good faith attempt to resolve the disagreement prior to the filing of a lawsuit or commencing a legal action. Vendor acknowledges that any dispute or disagreement under this Agreement relating to Citizens' Confidential Information shall not be subject to the foregoing dispute resolution process.

11.2. Jurisdiction and Venue; Waiver of Jury Trial. This Agreement shall be deemed to have been made in the State of Florida and shall be subject to, and governed by, the laws of the State of Florida, and no doctrine of choice of law shall be used to apply any law other than that of the State of Florida. Each Party hereby irrevocably consents and submits to the exclusive jurisdiction of the Circuit Court of Leon County, Florida, for all purposes under this Agreement, and waives any defense to the assertion of such jurisdiction based on inconvenient forum or lack of personal jurisdiction. The Parties also agree to waive any right to jury trial.

11.3. The provisions of this Section shall survive the termination of this Agreement.

12. Records; Audits.

12.1. Vendor's Records. Vendor shall retain all records relating to this Agreement for the longer of: (a) three (3) years after the termination of this Agreement; or (b) the period required by the General Records Schedules maintained by Citizens' Records Management. Citizens follows the GS1-SL state schedule for records retention.

12.2. Right to Audit Records. Citizens, as required by law shall have reasonable access to the Vendor's facilities and the right to review and audit any of Vendor's records related solely to this Agreement, upon written notice to Vendor of at least three (3) business days.

Vendor shall not unreasonably delay or inhibit Citizens' right to audit as set forth in this Section. The Vendor shall cooperate with auditor(s), providing requested documentation in a timely manner (preferably within five (5) business days). Vendor must resolve any deficiencies discovered during the audit within ninety (90) calendar days from being reported. Citizens may extend the response time period in its sole discretion. Citizens has the right to conduct follow-up audit procedures to assess Vendor's corrective action(s). Any entity performing auditing services pursuant to this Section shall execute a non-disclosure agreement with regard to Vendor's proprietary information, unless precluded from doing so by law. Vendor agrees to reimburse Citizens for the reasonable costs of investigation incurred by Citizens for investigations of Vendor's compliance with this Agreement which result in termination for cause or in regulatory or criminal penalties in connection with performance of this Agreement. Such costs may include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; expert witness fees; and documentary fees.

- 12.3. Public Records. Vendor acknowledges that Citizens is subject to Chapter 119, Florida Statutes, and Section 627.351(6)(j), Florida Statutes; therefore, any information provided to Citizens or maintained by Vendor in connection with this Agreement may fall within the disclosure requirements of Chapter 119, Florida Statutes. Vendor must clearly label and mark each page or section of information provided to Citizens in connection with this Agreement that it considers proprietary information or otherwise confidential or exempt from Chapter 119, Florida Statutes and Section 24(a), Article I., Florida Constitution ("Vendor's Confidential Information").

12.3.1. If Citizens receives a Public Records Request ("PRR") or a request from any regulatory or legislative entity regarding Vendor's Confidential Information, it shall promptly notify Vendor in writing, or electronically. The Parties agree (to the extent permitted by law) that Citizens shall not produce Vendor's Confidential Information unless authorized by Vendor, or by order of a court of competent jurisdiction. In the event a legal proceeding is brought to compel the production of Vendor's Confidential Information, the Parties agree that Citizens is authorized to deliver Vendor's Confidential Information to the court or other legal tribunal for disposition. If Vendor continues to assert in good faith that Vendor's Confidential Information is confidential or exempt from disclosure or production pursuant to Chapter 119, Florida Statutes, then Vendor shall be solely responsible for defending its position, or seeking a judicial declaration. Nothing in this Agreement shall create an obligation or duty for Citizens to defend or justify Vendor's position. Vendor also agrees to indemnify and hold harmless any Citizens Indemnitee for any Claims, including attorneys' fees, costs, and expenses incidental thereto, incurred by Citizens in connection with this Section.

12.3.2. If Vendor receives a PRR that is in any way related to this Agreement, Vendor agrees to immediately notify Citizens' Custodian of Records and forward the PRR to Citizens' Custodian of Records for logging and processing. Citizens' Custodian of Records' email address is: Recordsrequest@citizensfla.com. Citizens shall be the Party responsible for coordinating the response and production to the PRR. Vendor shall communicate with Citizens to determine whether requested information is confidential and/or exempt from public records disclosure requirements. Vendor agrees to assist Citizens in responding to any PRR in a prompt and timely manner as required by Chapter 119, Florida Statutes.

12.3.3. Without limiting Citizens' other rights of termination as further described in this Agreement, Citizens may unilaterally terminate this Agreement for refusal by

Vendor to comply with this Section by not allowing public access to all documents, papers, letters, emails, or other material made or received by Vendor in conjunction with this Agreement, unless the records are exempt from Section 24(a), Article I of the Florida Constitution and Section 119.07 (1), Florida Statutes.

12.3.4. The provisions of this Section shall survive the termination of this Contract.

13. Security and Confidentiality.

- 13.1. General Requirements. Vendor shall implement and maintain appropriate safeguards to: (a) ensure the security and confidentiality of Citizens' Confidential Information; (b) protect against any anticipated threats or hazards to the security or integrity of Citizens' Confidential Information; and (c) protect against unauthorized access to or use of Citizens' Confidential Information that could cause harm or inconvenience to Citizens or any customer of Citizens.
- 13.2. Use of Citizens' Systems. Where Vendor, or those providing Services for Vendor under the Contract, have access to Citizens' system or any other Citizens' systems or technology provided by or through Citizens, in addition to the other safeguards required by this Section, Vendor and Vendor Staff shall not share user identifications and / or passwords with any other individual.
- 13.3. Implementation of NIST 800-53 Controls. Except as permitted in writing by Citizens' Contract Manager or designee, Vendor agrees to implement the privacy and security controls that follow the guidelines set forth in NIST Special Publication 800-53, "Security and Privacy Controls for Federal Information Systems and Organizations," as amended from time-to-time.
- 13.4. Audit Reports. For each calendar year during the term of this Agreement, upon sixty (60) days of issuance but no later than the end of each calendar year, Vendor shall submit to Citizens via email to Citizens' Contract Manager or designee a copy of its annual American Institute of Certified Public Accountants Service Organization Control (SOC) 1 type 2 report and SOC 2 type 2 report (for all Trusted Services Principles).
- 13.5. Right of Audit by Citizens. Without limiting any other rights of Citizens herein, Citizens shall have the right to review Vendor's privacy and security controls prior to the commencement of Services and from time-to-time during the term of this Agreement. Such review may include Citizens' right, at its own expense and without notice, to perform (or have performed) an on-site audit of Vendor's privacy and security controls. In lieu of such an audit, Citizens may require Vendor to complete, within thirty (30) days of receipt, an audit questionnaire provided by Citizens regarding Vendor's privacy and security programs.
- 13.6. Audit Findings. Vendor shall implement any required safeguards as identified by Citizens or by any audit of Vendor's privacy and security controls.
- 13.7. Data Encryption. Vendor and Vendor Staff will encrypt all electronic data and communications containing Citizens' Confidential Information using a strong cryptographic protocol that is consistent with industry standards.
- 13.8. Data Storage. Except as permitted in writing by Citizens' Contract Manager or designee, Vendor and Vendor Staff shall not store Citizens' Confidential Information on portable external storage devices or media (such as "thumb drives," compact disks, or portable disk drives).
- 13.9. Data Export. Except as permitted in writing by Citizens' Contract Manager or designee,

Vendor and Vendor Staff are prohibited from: (a) performing any Services outside of the United States; or (b) sending, transmitting, or accessing any Citizens' Confidential Information outside of the United States.

- 13.10. Security of Vendor Facilities. All Vendor and Vendor Staff facilities in which Citizens' Confidential Information is located or housed shall be maintained in a reasonably secure manner. Within such facilities, all printed materials containing Citizens' Confidential Information should be kept locked in a secure office, file cabinet, or desk (except when materials are being used).
- 13.11. Printed Materials. Vendor and those providing Services for Vendor under the Contract shall not make photocopies or send facsimiles of Citizens' Confidential Information unless there is a business need. When not in use, all printed materials containing Citizens' Confidential Information should be kept locked in a secure location (e.g., cabinet, desk, etc.). The disposal of such printed materials must be conducted in manner that renders the information inaccessible to others (use of a reputable third party shredding company is permissible).
- 13.12. Authority to Disclose Confidential Information to Others. Vendor acknowledges and agrees that any Citizens' Confidential Information disclosed to or acquired by Vendor is disclosed and/or acquired solely for the purposes of facilitating the provision of the Services. Vendor shall restrict access to Citizens' Confidential Information to Vendor Staff who will actually perform Services and Vendor shall provide such Vendor Staff with work environments that protect against inadvertent disclosure to others. Vendor shall be solely responsible for informing any individual or entity with access to Citizens' Confidential Information of the provisions of this Agreement and shall be responsible for any acts of those individuals and entities that violate such provisions.
- 13.13. Unauthorized Disclosure of Confidential Information. Vendor will notify Citizens as soon as possible of any potential or actual unauthorized disclosure, misuse, or misappropriation of Citizens' Confidential Information of which it becomes aware and will cooperate in remedying such situation promptly. Pursuant to Section 501.171, Florida Statutes, if Vendor maintains computerized data that includes personal information, as defined in such statute, on behalf of Citizens, Vendor shall disclose to Citizens any breach of the security of the system as soon as practicable, but no later than ten (10) days following the determination of the breach of security or reason to believe the breach occurred.
- 13.14. Return of Citizens' Confidential Information. During the term of this Agreement upon Citizens' written request or upon the termination of this Agreement for any reason, Vendor shall promptly return to Citizens all copies, whether in written, electronic or other form or media, of Citizens' Confidential Information in its possession, or securely dispose of all such copies, and certify in writing to Citizens that Citizens' Confidential Information has been returned to Citizens or disposed of securely.
- 13.15. Notification of Anticipatory Breach. Vendor agrees that should it, for any reason, not be able to provide or maintain appropriate safeguards to fulfill its obligations under this Section, it will immediately inform Citizens in writing of such inability and such inability on Vendor's part will serve as justification for Citizens' termination of this Agreement, at Citizens' sole election, at any time after the inability becomes known to Citizens.
- 13.16. Remedies. Vendor acknowledges that breach of Vendor's obligation of data security and confidentiality may give rise to irreparable injury to Citizens and Citizens' customers, which damage may be inadequately compensable in the form of monetary damages.

Accordingly, Citizens may seek and obtain injunctive relief against the breach or threatened breach of the provisions of this Section, in addition to any other legal remedies which may be available, including, at the sole election of Citizens, the immediate termination, without penalty to Citizens, of this Agreement in whole or in part.

- 13.17. Labeling of Confidential Information. Any documents or electronic files created by Vendor or Vendor Staff that contain Citizens' Confidential Information must be conspicuously labeled or marked so that the individual viewing or receiving the information understands that the information is confidential.
- 13.18. Transmission of Confidential Information Materials. In the event it is necessary to transport materials containing Citizens' Confidential Information via mail, parcel delivery service or other means, Vendor Staff must subsequently verify that such materials have been received by the intended parties.
- 13.19. The provisions of this Section shall survive the termination of this Contract.

14. Miscellaneous.

- 14.1. Business Continuity and Disaster Recovery Plan. Vendor shall have a viable, documented, effective and annually tested business continuity / disaster recovery strategy plan in place to mitigate the potential disruption of Services. Within [written number] ([numeral]) days of execution of the Agreement, at its own cost and expense, Vendor shall provide to Citizens evidence and results of its tested business continuity / disaster recovery plan and annually thereafter by April 15th during the term of this Agreement.
- 14.2. Non Solicitation. Vendor will not directly solicit and hire for employment any active or current Citizens Employee during the term of this Contract and for six (6) months after this Contract is terminated.
- 14.3. Right to Set Off. Vendor agrees that Citizens has the sole discretion to off-set any appropriate amounts pursuant to this provision against Vendor's current or future monthly invoices which are due and owing by Citizens.
- 14.4. Relationship of the Parties. Vendor is an independent contractor with no authority to contract for Citizens or in any way to bind or to commit Citizens to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of Citizens. Under no circumstances shall Vendor or Vendor Staff hold itself out as or be considered an agent, employee, joint venturer, or partner of Citizens. In recognition of Vendor's status as an independent contractor, Citizens shall carry no Workers' Compensation insurance or any health or accident insurance to cover Vendor or Vendor Staff. Citizens shall not pay any contributions to Social Security, unemployment insurance, federal or state withholding taxes, any other applicable taxes whether federal, state, or local, nor provide any other contributions or benefits which might be expected in an employer-employee relationship. Neither Vendor nor Vendor Staff shall be eligible for, participate in, or accrue any direct or indirect benefit under any other compensation, benefit, or retirement plan of Citizens.
- 14.5. Vendor Conflicts of Interests. Vendor, and all principals in its business, must execute a Conflict of Interest Form as required by Citizens. Vendor shall not have a relationship with a Citizens officer or employee that creates a conflict of interest. If there is the appearance of a conflict of interest, Vendor will promptly contact Citizens' Contract Manager or designee to obtain a written decision as to whether action needs to be taken to ensure a conflict does not exist or that the appearance of a conflict is not significant.

- 14.6. Code of Ethics. In accordance with Citizens' Code of Ethics, Vendor and Vendor Staff shall not:
- Give a gift; that is, to make an expenditure to or for the personal benefit of a Citizens officer or employee.
 - Have a relationship with a Citizens officer or employee that creates a conflict of interest. If there is the appearance of a conflict of interest, Vendor will promptly contact Citizens' Contract Manager to obtain a written decision as to whether action needs to be taken to ensure a conflict does not exist or that the appearance of a conflict is not significant.
- 14.7. Convicted Vendor List. Vendor shall immediately notify Citizens' Contract Manager or designee in writing if it or any of its affiliates are placed on the convicted vendor list maintained by the State of Florida pursuant to Section 287.133, Florida Statutes, or on any similar list maintained by any other state or the federal government.
- 14.8. Compliance with Laws. Vendor and Vendor Staff will comply with all applicable laws, ordinances, rules, codes, and regulations governing Vendor's performance under this Agreement.
- 14.9. Severability. If a court deems any provision of this Agreement void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.
- 14.10. Publicity; Use of Names and Logos. Vendor may use Citizens' name and logo in its marketing materials, website and social media to indicate that it is a participating or contracted vendor for Citizens. However, Vendor may not in any way state, imply or infer that it holds a "preferred," "approved," "awarded," "selected" or otherwise special status with Citizens in any such materials. This prohibition includes, but is not limited to, the use of endorsements or quotes from Citizens officials, Citizens' vendor scores, or any other Citizens-related materials that may directly or indirectly imply that Vendor enjoys a special or preferred status with Citizens. Citizens reserves the right to determine that its name and/or logo have been misused and to request that Vendor cease using its name and/or logo in any way it deems inappropriate. Failure to comply will result in disciplinary action, up to and including contract termination. Vendor may only use the approved Citizens logo, which is available for download at: <https://www.citizensfla.com/about/mediaresources.cfm>.
- 14.11. Waiver. The delay or failure by a Party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of the Party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- 14.12. Entire Agreement. This Agreement, and any exhibits, schedules and attachments hereto, set forth the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous proposals, agreements or understandings with respect to the subject matter hereof. Notwithstanding the foregoing, the representations and warranties of the Vendor's response to the Solicitation are hereby incorporated into this Agreement and reaffirmed by Vendor.
- 14.13. Modification of Terms. This Agreement may only be modified or amended upon a mutual written contract amendment signed by Citizens and Vendor or as otherwise permitted by this Agreement. Vendor may not unilaterally modify the terms of this Agreement in any manner such as by affixing additional terms to any Deliverable (e.g., attachment or

inclusion of standard preprinted forms, product literature, "shrink wrap" or "click through" terms, whether written or electronic) or by incorporating such terms onto Vendor's order or fiscal forms or other documents forwarded by Vendor for payment, and any such terms shall have no force or effect upon Citizens or this Agreement. Citizens' acceptance of any Service or processing of documentation on forms furnished by Vendor for approval or payment shall not constitute acceptance of any proposed modification to terms and conditions or any conflicting terms and conditions.

- 14.14. Assignments. This Agreement shall inure to the benefits of, and be binding upon, the successors and assigns of each Party, but only as permitted under this Agreement. Each Party binds itself and its respective successors and assigns in all respects to all of the terms, conditions, covenants and provisions of this Agreement. Vendor shall not sell, assign or transfer any of its rights (including rights to payment), duties or obligations under this Agreement without the prior written consent of Citizens. In the event of any assignment, Vendor shall remain liable for performance of this Agreement unless Citizens expressly waives such liability. Citizens may assign this Agreement with prior written notice to Vendor of its intent to do so. Nothing herein shall be construed as creating any personal liability on the part of any officer, employee or agent of Citizens.
- 14.15. Notice and Approval of Changes in Ownership. Because the award of this Agreement may have been predicated upon Vendor's ownership structure, Vendor agrees that any transfer of a substantial interest in Vendor by any of its owners shall require Citizens' prior written approval, which approval shall not be unreasonably withheld or unreasonably delayed. By execution of this Agreement, Vendor represents that it has no knowledge of any intent to transfer a substantial interest in Vendor. A substantial interest shall mean at least twenty-five percent (25%) of the voting shares or control over Vendor. This Section shall not apply to: (a) transfers occurring upon the incapacitation or death of an owner; (b) transfers associated with an initial public offering on a major stock exchange; or (c) transfers to a company whose stock is publicly traded on a major stock exchange.
- 14.16. Assignment of Antitrust Claims. Vendor and Citizens recognize that in actual economic practice, overcharges resulting from antitrust violations are usually borne by the ultimate consumer. Therefore, Vendor hereby assigns to Citizens any and all claims under the antitrust laws of Florida or the United States for overcharges incurred in connection with this Agreement.
- 14.17. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute but one and the same Agreement. The Parties agree that a faxed or scanned signature may substitute for and have the same legal effect as the original signature.
- 15. Force Majeure**
- 15.1. Because of the nature of Citizens' business, Citizens requires that the Services be performed during or immediately after catastrophic events which might otherwise be considered force majeure. Therefore, Vendor acknowledges and agrees that force majeure will not constitute an excuse for non-performance of the Services as this Agreement and the Services are considered and designated as essential to Citizens' operations.