

CONTRACT FOR CONSOLIDATED REVOLVING ACCOUNT SYSTEM SERVICES

THIS CONTRACT ("Contract") is entered into by and between the State of Florida, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0300 (hereinafter referred to as "Department") or its successor, and Wachovia Bank, N.A., Government Banking, 225 Water Street, 2nd Floor, Jacksonville, Florida 32202 (hereinafter referred to as "Provider"), effective as of the last date executed below.

WITNESSETH THAT:

WHEREAS, the Department has determined that it is in need of certain services as described herein; and

WHEREAS, the Contractor, as an independent contractor of the Department, has the expertise and ability to faithfully perform such services.

NOW THEREFORE, in consideration of the services to be performed and payments to be made, together with the mutual covenants and conditions hereinafter set forth, the parties agree as follows:

1. Services and Deliverables: The Contractor agrees to render the services and other units of deliverables as set forth in the Contractor's accepted proposal responding to the Department's Request for Proposals (RFP) for services, RFP 08/09-35 and its FORM 3 (Price Proposal). The Contractor's performance shall be subject to all the terms, conditions, and understandings set forth in said RFP and the attachments to the RFP and PUR 1000 and 1001 incorporated by reference into the RFP, copies of which are attached hereto as Attachments H.
2. Documentation: Prior to the implementation of the Services, the TREASURY will execute and deliver documentation and instruments satisfactory to the CONTRACTOR, including but not limited to signature cards. The TREASURY will promptly notify Contractor in writing of any changes to the documentation and will promptly execute and deliver new documentation as may be required to the CONTRACTOR.
3. Payment:
 - 3(a) Subject to the terms and conditions established by this Contract and the billing procedures established by the Department, the Department agrees to pay the Contractor for services rendered.
 - 3(b) Vendor Rights: Vendors providing goods and services to an agency should be aware of the following time frames. Upon receipt, an agency has five (5) working days to inspect and approve the goods and services, unless the Proposal specifications, purchase orders or Contract specifies otherwise. An agency has 20

days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the date the invoice is received after the goods or services are received, inspected and approved. The Department is to approve the invoice in the state financial system within 20 days.

If a payment is not available within 40 days, a separate interest penalty, computed at the rate determined by the State of Florida Chief Financial Officer pursuant to Section 215.422, Florida Statutes, will be due and payable, in addition to the invoice amount, to the vendor. To obtain the applicable interest rate, please refer to <http://www.dbf.state.fl.us/interest.html>. Invoices returned to a Vendor due to preparation errors will result in a payment delay. Invoice payment requirements do not start until a properly completed invoice is provided to the State agency with the proper tax payer identification information documentation to be submitted before the prompt payment standards are to be applied. Interest penalties of less than one (1) dollar will not be enforced unless the vendor requests payment. Invoices that have to be returned to a vendor because of vendor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the agency with the proper taxpayer identification information documentation to be submitted before the prompt payment standards are to be applied.

A Vendor Ombudsman has been established with the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be reached at (850) 413-5516.

- 3(c) Taxes. The Department is exempted from payment of Florida state sales and use taxes and Federal Excise Tax. The Contractor, however, shall not be exempted from paying Florida state sales and use taxes to the appropriate governmental agencies or for payment by the Contractor to suppliers for taxes on materials used to fulfill its contractual obligations with the Department. The Contractor shall not use the Department's exemption number in securing such materials. The Contractor shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Contract.
- 3(d) Expenses. Any expense incurred by the Contractor for travel must be authorized by the Department in advance. Travel expenses will be reimbursed to the Contractor at a rate not to exceed that which

is payable to state employees for travel and per diem as prescribed by Section 112.061, Florida Statutes, and shall be submitted in accordance with said section. All other expenses, including expenses for the gathering and presentation of exhibits, must be authorized by the Department in advance.

- 3(e) **Payment Processing.** All charges for services rendered or for reimbursement of expenses authorized by the Department in accordance with Paragraphs 3 and 4 shall be submitted to the Department in sufficient detail for a proper pre-audit and post-audit to be performed. All payments for professional services and authorized expenses, including travel expenses, will be paid to the Contractor only upon the timely and satisfactory completion of all services and other units of deliverable such as reports, findings and drafts, which are required by Paragraphs 1 and 2 above and upon the written acceptance of said services and units of deliverables such as reports, findings and drafts by the Department's designated contract manager. Interim payments may be made by the Department at its discretion under extenuating circumstances if the completion of services and other units of deliverables to date has first been accepted in writing by the Department's contract manager.
- 3(f) **Contingency.** If the terms of this Contract extend beyond the current fiscal year, the State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature.
4. **Acceptance:** All of Contractor's Deliverables related to these services shall be submitted to the DFS contract manager for review and approval. To reduce printing cost and eliminate posting errors, Contractor's selected vendor shall inspect and approve completed check and deposit ticket orders before delivery to the Treasury. DFS reserves the right to reject deliverables as incomplete, inadequate or unacceptable due in whole or in part to Contractor's lack of satisfactory performance under the terms of this Contract. DFS, at its option, may allow additional time within which Contractor may remedy the objections noted by DFS. Failure to complete the required duties as outlined in the Statement of Work may result in the rejection of the invoice. (modifies PUR 1000 ¶13)
5. **State property:** Title to all property furnished by the Department under this Contract shall remain in the Department, and Contractor shall surrender to the Department all property of the Department prior to settlement upon completion, termination, or cancellation.

6. Termination:

- a. The Department may, in its sole discretion, terminate the Contract at any time by giving six (6) months written notice to the Contractor.
- b. All services performed by the Contractor prior to the termination date of this Contract shall be professionally serviced to conclusion in accordance with the requirements of the Contract. Should the Contractor fail to perform all services under the Contract, the Contractor shall be liable to the Department for any fees or expenses that the Department may incur in securing a substitute provider to assume completion of those services.
- c. As provided in Section 287.058, Florida Statutes, the Department may terminate the Contract immediately in the event that the Department requests in writing that the Contractor allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, which are made or received by the Contractor in conjunction with the Contract, and the Contractor refuses to allow such access. However, nothing herein is intended to expand the scope or applicability of Chapter 119, Florida Statutes, to the Contractor. The Contractor shall not be required to disclose to the public any proprietary copyrighted trade secrets or other materials protected by law as pursuant to Section 119.07, Florida Statutes.
- d. If at any time the Contract is canceled, terminated, or expires, and a contract is subsequently executed with a firm other than the Contractor, the Contractor has the affirmative obligation to assist in the smooth transition of Contract services to the subsequent contractor. The Contractor agrees to provide, for up to six (6) months after termination or until the subsequent provider is fully operational, whichever occurs first, all reasonable termination assistance requested by the Department to facilitate the orderly transfer of such services to the Department or its designees. Such termination assistance shall be at no additional charge to the Department if the termination is due to Contractor default. If the termination is not based upon Contractor default, payment shall be made on a time and materials basis pursuant to the "Hourly Cost Per Claims" rate identified in Section 4.i., above.
- e. If the Contractor defaults in the performance of any covenant or obligation contained in the Contract, including without limitation the minimum requirements contained in the Statement of Work, or in the event of any material breach of any provision of the Contract

by the Contractor, the Department may, in its sole discretion, provide notice and an opportunity to cure the default rather than exercise the remedy of termination. If the default or breach is not cured within thirty (30) days after written notice is given to the Contractor specifying the nature of the alleged default or breach, then the Department, upon giving written notice to the Contractor, shall have the right to terminate the Contract effective as of the date of receipt of the default notice.

Provided such failure is not the fault of the Department or outside the reasonable control of the Contractor, the following events, acts, or omissions, shall include but are not limited to, events of default:

- 1) Failure to pay any and all entities, individuals, and the like furnishing labor or materials, or failure to make payment to any other entities as required herein in connection with the Contract;
- 2) Failure to complete and maintain, within the timeframes specified between the Department and the Contractor, the applicable system installation, ongoing performance, maintenance, and provision of Services;
- 3) The commitment of any material breach of this Contract by the Contractor, failure to timely deliver a material deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Contract;
- 4) Employment of an unauthorized alien in the performance of the work;
- 5) One or more of the following circumstances, uncorrected for more than thirty (30) days unless within the specified thirty (30) day period, the Contractor (including its receiver or trustee in bankruptcy) provides to the Department adequate assurances, reasonably acceptable to the Department, of its continuing ability and willingness to fulfill its obligations under the Contract:
 - a) entry of an order for relief under Title 11 of the United States Code;
 - b) the making by the Contractor of a general assignment for the benefit of creditors;

- c) the appointment of a general receiver or trustee in bankruptcy of the Contractor's business or property;
 - d) an action by the Contractor under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation;
 - e) entry of an order revoking the certificate of authority granted to the Contractor by the State or other licensing authority;
- 6) The Contractor makes or has made an intentional material misrepresentation or omission in any materials provided to the Department or fails to maintain the required insurance.

8. Liability and Indemnification:

In addition to the provisions in PUR 1000 regarding liability, the following provisions apply: no provision in this Contract shall require the Department to hold harmless or indemnify the Contractor, insure or assume liability for the Contractor's negligence, waive the Department's sovereign immunity under the laws of Florida, or otherwise impose liability on the Department for which it would not otherwise be responsible. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Contract.

The Department's maximum liability for any damages, regardless of form of action, shall in no event exceed the fees actually paid to Contractor for the relevant products or services giving rise to the liability, prorated over a three year term from the installation of products or the date of performance of the applicable services.

Notwithstanding the terms of the standard Deposit Agreement and Disclosures for Commercial Accounts (the "Agreement") entered into between Wachovia Bank, N.A. ("Wachovia") and the State of Florida ("State"), Wachovia acknowledges and agrees that any obligations of indemnity which the State may have under the Agreement shall not be enforceable against the State to the extent such obligations are prohibited by applicable law.

9. Term and Renewal: The term of the Contract is five (5) years and is subject to three (3) one year renewals. The renewal price, or method for determining a renewal price, is set forth in the Contract price, attached hereto. No other costs for the renewal may be charged. Any renewal is subject to the same terms and conditions as the original contract and shall be contingent upon satisfactory performance evaluations by the Department and subject to the availability of funds. The Department shall

have the right to unilaterally terminate or suspend the Contract, by providing the Contractor thirty (30) days written notice.

10. **Contract Modification.** This Contract may be amended only by a written agreement between both parties subject to the provisions of Chapter 287, Florida Statutes.
11. **Nonexclusive Contract.** This procurement will not result in an exclusive license to provide the services described in this RFP or the resulting contract. The Department may, without limitation and without recourse by the Contractor, contract with other Vendors to provide the same or similar services.
12. **Statutory Notices:** The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. Such violation shall be cause for unilateral cancellation of this Contract. An entity or affiliate who has been placed on the public entity crimes list or the discriminatory vendor list may not submit a Proposal on a contract to provide any goods or services to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity pursuant to limitations under Chapter 287, Florida Statutes.
13. **Compliance with Federal, State and Local Laws:** Contractor and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, worker's compensation, licenses and registration requirements.
14. **Miscellaneous:**
 - 14(a) This Contract, and any referenced or attached addendum, embodies the entire agreement of the parties. There are no other provisions, terms, conditions, or obligations. This Contract supersedes all previous oral or written communications, representations or agreements on this subject. Any conflict between this Contract and any referenced or attached addendum the terms and conditions of this Contract shall take precedence and govern.
 - 14(b) In all cases, venue shall be in Leon County, Florida.
 - 14(c) The laws of the State of Florida and the Department's rules govern this Contract.
 - 14(d) The Contractor agrees that no funds received by it under this contract will be expended for the purpose of lobbying the

Legislature or a state agency pursuant to Section 216.347, Florida Statutes, except that pursuant to the requirements of section 287.058(6), Florida Statutes, during the term of any executed contract between the Contractor and the state, the Contractor may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that contract.

- 14(e) The Contractor is an independent contractor, and is not an employee or agent of the Department.
- 14(f) All services contracted for are to be performed solely by the Contractor and may not be subcontracted or assigned without the prior written consent of the Department.
- 14(g) The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Contract, including without limitation, the obligations regarding confidentiality, proprietary interests, and limitations of liability shall survive termination, cancellation or expiration of this Contract.
- 14(h) Contractor hereby agrees to protect, indemnify, defend and hold harmless the Department from and against any and all costs, claims, demands, damages, losses and liabilities arising from or in any way related to Contractor's breach of this contract or the negligent acts or omissions of Contractor.
- 14(i) The Department shall not be deemed to assume any liability for the acts, omissions to act or negligence of the Contractor, its agents, servants, and employees, nor shall the Contractor disclaim its own negligence to the Department or any third party.
- 14(j) If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

15. Contract Administration:

Send Invoices To: Department of Financial Services
Bureau of Funds Management
200 East Gaines Street
Tallahassee, Florida 32399-0344

For all other contract-related notices, the Department contract manager is:
Miriam Gray located at 1801 Hermitage Blvd, Tallahassee, Florida 32308.

All written and verbal approvals referenced in this Contract must be obtained from the parties' contract managers or designees. Notices required to be in writing must be delivered or sent to the intended recipient by hand delivery, certified mail or receipted courier and shall be deemed received on the date received or the date of the certification or receipt. (see PUR 1000 ¶15, 38)

Contract manager for Wachovia Bank, N.A. is Leslie Skipper located at 225 Water Street, 2nd Floor, Jacksonville, Florida 32202.

IN WITNESS WHEREOF, the Department of Financial Services and Wachovia Bank, N.A., by their duly authorized representatives, have signed this Contract.



Wachovia Bank, N.A.

Title: S. U. P

Date: 12.16.2009



Department of Financial Services

Chief of Staff or Designee

Date: 12/23/09