

ATTACHMENT B

DRAFT CONTRACT

FOR

GENERATOR PREVENTATIVE MAINTENANCE SERVICES

RFP NO.: DMS-20/21-129

BETWEEN

THE STATE OF FLORIDA

DEPARTMENT OF MANAGEMENT SERVICES

AND

<<PARTY NAME>>

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Contract

This Contract is between the STATE OF FLORIDA, DEPARTMENT OF MANAGEMENT SERVICES (Department), an agency of the State of Florida with offices at 4050 Esplanade Way, Tallahassee, Florida 32399-0950, and (Contractor) with offices at (Contractor Address), each a "Party" and referred to herein collectively as the "Parties".

The Parties enter into this Contract in accordance with the terms and conditions of RFP No.: DMS-20/21-129, Generator Preventative Maintenance Services for services at the Department's facilities listed on Attachment C – Facility List.

The Parties, therefore, agree as follows:

SECTION 1. DEFINITIONS

The following definitions apply in addition to the definitions in the PUR 1000 form.

- 1.1 Confidential Information:** Information or material which (i) meets the definition of "Trade Secret" in section 812.081(1)(c), Florida Statutes (F.S.); or (ii) is otherwise exempt from the disclosure of public records required by Article I, Section 24, Florida Constitution (exemptions may be found in Chapter 119, F.S., other Florida laws, and preempting Federal laws or regulations).
- 1.2 Contract:** The binding agreement resulting from RFP No.: DMS-20/21-129 between the Department and the Contractor and consisting of the Contract Documents set forth in Section 4 herein.
- 1.3 Contract Manager:** The representative designated by the Department who will oversee all aspects of the Contract, monitor performance expectations, and serve as the primary point of contact for the Contractor.

SECTION 2. TERM

- 2.1 Initial Term**

The initial term of the Contract will be for five (5) years. The initial Contract term is expected to begin on July 1, 2021.
- 2.2 Renewal Term**

Upon written agreement, the Department and the Contractor may renew the Contract in whole or in part, for up to five (5) years. The Contract may only be renewed in accordance with section 287.057(13), Florida Statutes. Any renewals shall be contingent upon satisfactory performance evaluations by the Department and subject to the availability of funds.
- 2.3 Termination**

The Department, by thirty (30) days advance written notice to Contractor, may terminate the Contract in whole or in part when the Department determines in its sole discretion that it is in the Department's best interest to do so. Contractor will not furnish any services after termination of the Contract, except as necessary to complete any continued portion of the Contract. Contractor will not be entitled to

recover any consequential damages including but not limited to cancellation charges and lost profits.

SECTION 3. PAYMENTS

3.1 Pricing

The Contractor shall adhere to the prices as stated in Attachment D – Price Sheets, of the Contractor's response submission, which is hereby incorporated by reference. The Parties agree that this pricing will apply for the entire length of the Contract, including any renewal years.

3.2 Detail of Bills

The Contractor shall submit bills for fees or other compensation for services or expenses in detail sufficient enough for a proper pre-audit and post-audit. The Department reserves the right to request additional documentation as needed.

3.3 Bills for Travel

Travel expenses are not permitted under this Contract.

3.4 Payments

The Parties agree that payments under this Contract shall be made for deliverables received in accordance with this Contract, to be paid monthly.

3.5 Final Invoice

Unless the Contract is renewed or extended, the deliverables in Attachment A - Statement of Work must be completed by the Contract end date. The final invoice shall be due no later than sixty (60) days after the expiration or termination of this Contract.

3.6 Appropriations

The State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature.

SECTION 4. CONTRACT DOCUMENT

4.1 Contract Documents & Hierarchy

This Contract sets forth the entire understanding of the Parties and consists of the documents listed below. In the event any of these documents conflict, the conflict will be resolved in the following order of priority (highest to lowest):

- Any amendments to this Contract in reverse order;
- This Contract document Attachments A, C, D, and E;
- The General Contract Conditions (PUR 1000, 2006 version), which is incorporated by reference and can be accessed at: http://www.dms.myflorida.com/business_operations/state_purchasing/documents/forms_references_resources/purchasing_forms; and
- The Contractor's response to RFP No.: DMS-20/21-129.

SECTION 5. CONTRACT ADMINISTRATION

5.1 Department Contract Administrator

The Contract Administrator whose responsibilities will be to maintain this Contract is as follows:

Pegah Bowman
Florida Department of Management Services
Departmental Purchasing
4050 Esplanade Way, Suite 335.2Y
Tallahassee, Florida 32399-0950
Telephone: (850) 488-0510
Email: DMS.Purchasing@dms.myflorida.com

In the event that the Department changes the Contract Administrator, the Department will notify the Contractor in writing via email. Such changes do not require a formal written amendment to the Contract.

5.2 Department Contract Manager

The Department's Contract Manager who is primarily responsible for overseeing the Contractor's performance of its duties and obligations pursuant to the terms of this Contract shall be as follows:

Brad Kinsey
Florida Department of Management Services
Division of Real Estate Development and Management
4050 Esplanade Way, Suite 315
Tallahassee, Florida 32399
Telephone: (850) 413-9587
Email: Brad.Kinsey@dms.fl.gov

In the event that the Department changes the Department Contract Manager, the Department will notify the Contractor in writing via email. Such changes do not require a formal written amendment to the Contract.

5.3 Contractor Representative

The Contractor's employee who is primarily responsible for overseeing the Contractor's performance of its duties and obligations pursuant to the terms of this Contract shall be:

<Insert Contractor Representative Name>
<Insert Contractor Name>
<Insert Contractor Physical Address>
Telephone: (XXX) XXX-XXXX
Email: <Insert Representative Email>

In the event that the Contractor changes the Contractor Representative, the Contractor will notify the Department in writing via email. Such changes do not require a formal written amendment to the Contract.

5.4 Diversity Reporting

The State of Florida is committed to supporting its diverse business industry and population through ensuring participation by minority-, women-, and veteran-owned business enterprises in the economic life of the State. The Department of Management Services encourages supplier diversity through certification of business enterprises, advocacy and outreach, and Business Match Maker events. For additional information, please contact the Office of Supplier Diversity at (850) 487-0915 or osdhelp@dms.myflorida.com.

Upon request, the Contractor shall report to the Department, spend with certified and other minority business enterprises. These reports will include the period covered, the name, minority code and Federal Employer Identification Number of each minority vendor utilized during the period, commodities and services provided by the minority business enterprise, and the amount paid to each minority vendor on behalf of each purchasing agency ordering under the terms of this Contract.

SECTION 6. COMPLIANCE WITH LAWS

6.1 Compliance

The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and authority. Chapter 287, Florida Statutes, and Rule 60A, Florida Administrative Code, govern the Contract. The Contractor shall comply with section 274A of the Immigration and Nationality Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of any laws, rules, codes, ordinances, or licensing requirements shall be grounds for Contract termination or non-renewal of the Contract.

6.2 Notice of Legal Actions

The Contractor shall notify the Department of any legal actions filed against it for a violation of any laws, rules, codes, ordinances, or licensing requirements within thirty (30) days of the action being filed. The Contractor shall notify the Department of any legal actions filed against it for a breach of a contract of similar size and scope to this Contract within thirty (30) days of the action being filed. Failure to notify the Department of a legal action within thirty (30) days of the action shall be grounds for termination or nonrenewal of the Contract.

6.3 Convicted and Discriminatory Vendors

Pursuant to sections 287.133 and 287.134, Florida Statutes, the following restrictions are placed on the ability of persons placed on the convicted vendor list or the discriminatory vendor list.

6.3.1 Convicted Vendors

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property 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 in excess of the threshold amount provided in section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months following the date of being placed on the convicted vendor list.

6.3.2 Discriminatory Vendors

An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property 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.

The Contractor shall notify the Department if it or any of its suppliers, subcontractors or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Contract.

6.4 Cooperation with the Inspector General

Pursuant to section 20.055(5), Florida Statutes, Contractor and any subcontractors understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing.

SECTION 7. DEPARTMENT OF STATE, CORPORATE STATUS CERTIFICATE

Contractor (and any subcontractors) certifies that it is currently authorized to do business in the State and has submitted to the Department a copy of its registration with the Department of State, Division of Corporations. Website: <https://dos.myflorida.com/sunbiz/>

Title XXXVI, Business Organizations, F.S., lists the requirements that out-of-state entities must fulfill to obtain a Florida Certificate of Authorization from the Florida Department of State, Division of Corporations, to transact business in the State of Florida (e.g., see section 607.1503(1), F.S., pertaining to corporations). Foreign entities may not transact business in the State until they obtain a certificate of authority from the Florida Department of State. Website: www.sunbiz.org.

SECTION 8. LIABILITY AND WORKER'S COMPENSATION INSURANCE

This paragraph replaces section 35, of the PUR 1000. During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract, which, at a minimum, shall be as follows:

- 8.1.** Workers' compensation and employer's liability insurance per Florida statutory limits (currently \$100,000.00 per accident, \$100,000.00 per person and \$500,000.00 policy aggregate) covering all employees engaged in any Contract work;

- 8.2.** Commercial general liability coverage on an occurrence basis in the minimum amount of \$1,000,000.00 (defense cost shall be in excess of the limit of liability), naming the State as an additional insured; and
- 8.3.** Automobile liability insurance covering all vehicles, owned or otherwise, used in the Contract work, with minimum combined limits of \$1,000,000.00, including hired and non-owned liability and \$5,000.00 medical payment.

Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of the Contract. The Contract shall not limit the types of insurance Contractor may desire to obtain or be required to obtain by law. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized to write policies in the State of Florida. The Contractor shall have its insurance carrier note the Department as the certificate holder as provided below:

Florida Department of Management Services
Division of Real Estate Development and Management
c/o Departmental Purchasing
4050 Esplanade Way, Suite 335
Tallahassee, Florida 32399-0950

SECTION 9. PUBLIC RECORDS

9.1 Access to Public Records

The Department may unilaterally cancel this Contract for refusal by the Contractor to comply with this section by not allowing public access to all documents, papers, letters or other material made or received by the Contractor in conjunction with the Contract, unless the records are exempt from section 24(a) of Article I of the State Constitution and section 119.07(1), Florida Statutes.

9.2 Redacted Copies of Confidential Information

If the Contractor considers any portion of any documents, data, or records submitted to the Department to be Confidential Information, the Contractor must simultaneously provide the Department with a separate copy of the documents, data, or records it claims contains Confidential Information, with the portion containing the Confidential Information redacted, and briefly describe in writing the grounds for claiming exemption from the public records law, including the specific statutory citation for such exemption. Both copies shall contain the Contract name and number, and the unredacted copy shall be clearly titled "Confidential." The redacted copy should only redact those portions of material that the Contractor claims are Confidential Information.

9.3 Request for Redacted Information

In the event of a public records or other disclosure request pursuant to Chapter 119, F.S., the Florida Constitution or other authority, to which documents that are marked as "Confidential" are responsive, the Department will provide the Contractor-redacted copies to the requestor. If a requestor asserts a right to the Confidential Information, the Department will notify the Contractor such an assertion has been made. It is the Contractor's responsibility to assert that the information in question is exempt from disclosure under Chapter 119, F.S., or other applicable law. The

Contractor shall be responsible for defending its determination that the redacted portions of its response are confidential, proprietary, trade secret, or otherwise not subject to disclosure.

9.4 Indemnification

The Contractor shall protect, defend, and indemnify the Department for any and all claims arising from or relating to the Contractor's determination that the redacted portions of its response are Confidential Information. If the Contractor fails to submit a redacted copy of information it claims is confidential, the Department is authorized to produce the entire documents, data, or records submitted to the Department in response to a public records request or other lawful request for these records.

9.5 Contractor as Agent

Solely for the purposes of this section, the Department's Contract Manager is the agency custodian of public records. If, under this Contract, the Contractor is providing services and is acting on behalf of a public agency, as provided by section 119.0701, Florida Statutes, the Contractor shall:

9.5.1 Keep and maintain public records required by the public agency to perform the service.

9.5.2 Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within reasonable time and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

9.5.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the Contract term and following the completion of the Contract if the Contractor does not transfer the records to the public agency.

9.5.4 Upon completion of the Contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

9.5.5 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS

**CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC
RECORDS AT THE TELEPHONE NUMBER, EMAIL
ADDRESS AND MAILING ADDRESS PROVIDED FOR
THE CONTRACT MANAGER.**

SECTION 10. INTELLECTUAL PROPERTY

The Parties do not anticipate that any intellectual property will be developed as a result of this Contract. However, any intellectual property developed as a result of this Contract will belong to, and be the sole property of, the State. This provision will survive the termination or expiration of this Contract.

SECTION 11. E-VERIFY

The Contractor (and its subcontractors) have an obligation to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees. By executing this Contract, the Contractor certifies that it is registered with, and uses, the E-Verify system for all newly hired employees.

The Contractor must obtain an affidavit from its subcontractors in accordance with paragraph (2)(b) of section 448.095, F.S., and maintain a copy of such affidavit for the duration of the Contract. In order to implement this provision, the Contractor shall provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five days of Contract execution. Upon each Contractor or subcontractor new hire, the Contractor must provide a statement within five (5) calendar days to the Contract Manager identifying the new hire with its E-Verify case number.

This section serves as notice to the Contractor regarding the requirements of section 448.095, F.S., specifically sub-paragraph (2)(c)1, and the Department's obligation to terminate the Contract if it has a good faith belief that the Contractor has knowingly violated section 448.095(1), F.S. If terminated for such reason, the Contractor will not be eligible for award of a public contract for at least one year after the date of such termination.

The Department reserves the right to order the immediate termination of any contract between the Contractor and a subcontractor performing work on its behalf should the Department develop a good faith belief that the subcontractor has knowingly violated section 448.095(1), F.S.

SECTION 12. SCRUTINIZED COMPANIES – TERMINATION BY THE DEPARTMENT

The Department may, at its option, terminate the Contract if the Contractor: is found to have submitted a false certification as provided under section 287.135(5), F.S.; has been placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List; has been engaged in business operations in Cuba or Syria: or is engaged in a boycott of Israel..

SECTION 13. GEOGRAPHIC LOCATION OF DATA AND SERVICES

The State of Florida requires that all data generated, used, or stored by the Contractor pursuant to the Contract will reside and remain in the United States and will not be transferred outside of the United States. The State of Florida also requires that all services provided under the Contract, including call center or other help services, will be performed by persons located in the United States.

SECTION 14. RECORDS RETENTION

The Contractor shall retain sufficient documentation to substantiate claims for payment under the Contract and all other records, electronic files, papers, and documents that were made in relation to this Contract. Contractor shall retain all documents related to this Contract in compliance with the rules of the Florida Department of State.

SECTION 15. GIFTS

The Contractor agrees that it will not offer to give or give any gift to any State of Florida employee. This Contractor will ensure that its subcontractors, if any, will apply with this provision.

SECTION 16. VENDOR OMBUDSMAN

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this office are found in section 215.422, Florida Statutes, which include disseminating information relative to prompt payment and assisting vendors in receiving their payments in a timely manner from a Customer. The Vendor Ombudsman may be contacted at (850) 413-5516.

SECTION 17. MONITORING BY THE DEPARTMENT

The Contractor shall permit all persons who are duly authorized by the Department to inspect and copy any records, papers, documents, facilities, goods and services of the Contractor that are relevant to this Contract and to interview clients, employees and subcontractor employees of the Contractor to assure the Department of satisfactory performance of the terms and conditions of this Contract. Following such review, the Department may deliver to the Contractor a written report of its finding(s) and direct the development, by the Contractor, of a corrective action plan. This provision will not limit the Department's termination rights.

SECTION 18. AUDITS

The Department may conduct or have conducted performance and/or compliance audits of any and all areas of the Contractor and subcontractors as determined by the Department. The Department may conduct an audit and review all the Contractor's and Subcontractors' data and records that directly relate to the Contract Services. To the extent necessary to verify the Contractor's fees and claims for payment under the Contract, the Contractor's agreements or contracts with subcontractors, partners or agents of the Contractor, pertaining to this Contract, may be inspected by the Department upon fifteen (15) days' notice, during normal working hours and in accordance with the Contractor's facility access procedures where facility access is required. Release statements from its subcontractors,

partners or agents are not required for the Department or its designee to conduct compliance and performance audits on any of the Contractor's contracts relating to this Contract. The State's Chief Financial Officer and the Office of the Auditor General also have authority to perform audits and inspections.

SECTION 19. BACKGROUND SCREENING, RECORD RETENTION, AND WARRANTY OF SECURITY

All Contractor employees, Subcontractors and agents performing work under the Contract must comply with all security and administrative requirements of the Department.

19.1 Background Screening

In addition to any background screening required by the Contractor as a condition of employment and the requirements found in the Statement of Work, the Contractor warrants that it will conduct a criminal background screening of, or ensure that such a screening is conducted for, each of its employees, subcontractor personnel, independent contractors, leased employees, volunteers, licensees or other person, hereinafter referred to as "Person" or "Persons," operating under their direction who directly perform services under the Contract, whether or not the Person has access to State of Florida Data, as well as those who have access, including indirect access, to State of Florida Data, whether or not they perform services under the Contract. The Contractor warrants that all Persons will have passed the Background Screening described herein before they have Access to Data or begin performing services under the Contract. The look-back period for such background screenings shall be for a minimum of six (6) years where six (6) years of historical information is available.

"Access" means to review, inspect, approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any data, regardless of type, form, or nature of storage. Access to a computer system or network includes local and remote access.

"Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions, whether it is exempt, confidential, or personal health information. Data may be in any form, including but not limited to, storage media, computer memory, in transit, presented on a display device, or in physical media such as paper, film, microfilm, or microfiche. Data includes the original form of the Data and all metadata associated with the Data.

The minimum background check process will include a check of the following databases through a law enforcement agency or a Professional Background Screener accredited by the National Association of Professional Background Screeners or a comparable standard:

- Social Security Number Trace; and
- Criminal Records (Federal, State and County criminal felony and misdemeanor, national criminal database for all states which make such data available).

The Contractor agrees that each Person will be screened as a prior condition for performing services or having access to State of Florida Data. The Contractor is

responsible for any and all costs and expenses in obtaining and maintaining the criminal background screening information for each Person described above. The Contractor will maintain documentation of the screening in the Person's employment file. The Contractor will abide by all applicable laws, rules, and regulations including, but not limited, to the Fair Credit Reporting Act and/or any equal opportunity laws, rules, regulations or ordinances.

19.1.1 Disqualifying Offenses

If at any time it is determined that a Person has a criminal misdemeanor or felony record regardless of adjudication (e.g., adjudication withheld, a plea of guilty or nolo contendere, or a guilty verdict) within the last six (6) years from the date of the court's determination for the crimes listed below, or their equivalent in any jurisdiction, the Contractor is required to immediately remove that Person from any position with access to State of Florida Data or directly performing services under the Contract. The disqualifying offenses are crimes where the nature of the criminal activity is such that a reasonable person would agree that the Person's employment would create a risk of injury, loss, or damage to people and/or property of any State of Florida premises. Examples of these types of crimes include but may not be limited to the following:

- Computer related or information technology crimes
- Fraudulent practices, false pretenses and frauds, and credit card crimes
- Forgery and counterfeiting
- Violations involving checks and drafts
- Misuse of medical or personnel records
- Felony theft
- Murder/Manslaughter
- Petit Theft
- Burglary/Robbery
- Aggravated assault
- Sexual Battery
- Kidnapping/False Imprisonment

If the Contractor finds a Disqualifying Offense for a Person within the last six (6) years from the date of the court's disposition, it may obtain information regarding the incident and determine whether that Person should continue providing services under the Contract or have access to State of Florida Data. The Contractor will consider the following factors only in making the determination: i.) nature and gravity of the offense, ii.) the amount of time that lapsed since the offense, iii.) the rehabilitation efforts of the person, and iv.) relevancy of the offense to the job duties of the Person. If the Contractor determines that the Person should be allowed access to State of Florida Data, then Contractor shall maintain all criminal background screening information and the rationale for such access in the Person's employment file.

19.1.2 Refresh Screening

The Contractor will ensure that all background screening will be refreshed at least once (1) every year from the time initially performed for each Person during the Term of the Contract.

19.1.3 Warrant of Security

“Warrant of Security” means a written document signed by the Contractor and submitted to the Department’s Contract Manager in which the Contractor includes:

- The name of each individual or Person subject to a criminal background screening under the Contract, and the date of his or her most recent criminal background screening; and
- A statement confirming that the criminal background screening did not identify a disqualifying offense; or
- Notwithstanding the criminal background screening identifying a disqualifying offense, the individual was permitted to become a Person performing services by the Contractor as supported by an analysis using only the factors in subsection 19.1.1.

No Warrant of Security shall include the substance of criminal background screening results or any subsequent analysis.

19.1.3.1 Initial Warrant of Security

The Contractor will submit an Initial Warrant of Security before services are delivered under this Contract.

19.1.3.2 Annual Warrant of Security

The Contractor will submit a Warrant of Security to the Contract Manager by December 31st of each Contract year.

19.1.3.3 Supplemental Warrant of Security

The Contractor will submit a supplemental Warrant of Security to the Contract Manager before any individual subsequently hired by the Contractor, and becomes a Person, delivers services under this Contract.

19.1.4 Self-Disclosure

The Contractor shall ensure that all Persons have a responsibility to self-report within three (3) calendar days to the Contractor any updated court disposition regarding any disqualifying offense, regardless of adjudication (adjudication withheld, a plea of guilty or nolo contendere, or a guilty verdict). The Contractor shall immediately reassess whether to disallow that Person access to any State of Florida premises or from directly performing services under the Contract. Additionally, the Contractor shall require that the Person complete an annual certification that they have not received any additional criminal misdemeanor or felony record regardless of adjudication (adjudication withheld, a plea of guilty or nolo contendere, or a guilty verdict) for the Disqualifying Offenses and shall maintain that certification in the employment file.

In addition, the Contractor shall ensure that all Persons have a responsibility to self-report to the Contractor within three (3) calendar days, any arrest for any Disqualifying Offense. The Contractor shall notify the Department’s Contract Manager within twenty-four (24) hours of all details concerning any reported arrest.

19.2 Duty to Provide Secure Data

The Contractor will maintain the security of State of Florida Data including, but not limited to, a secure area around any display of such Data or Data that is otherwise visible. The Contractor will also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information. Data cannot be disclosed to any person or entity that is not directly approved to participate in the scope of work set forth in this Contract.

19.3 Department's Ability to Audit Screening Compliance and Inspect Locations

The Department reserves the right to audit the Contractor's background screening process upon two (2) days prior written notice to the Contractor during the Term of the Contract. Department will have the right to inspect the Contractor's working area, computer systems, and/or location upon two (2) business days prior written notice to the Contractor to ensure that access to the State of Florida Data is secure and in compliance with the Contract and all applicable state and federal rules and regulations.

19.4 Record Retention

The Contractor shall retain a list of all Persons with Access to Data, including a statement confirming that each Person has passed the Background Screening required herein. Such a statement shall not include the substance of the screening results, only that the Person has passed the screening.

The Contractor shall create a written policy for the protection of Data, including a policy and procedure for Access to Data.

The Contractor shall document and record, with respect to each instance of Access to Data:

- 1) The identity of all individual(s) who accessed Data in any way, whether those individuals are authorized Persons or not;
- 2) The duration of the individual(s)' access to Data, including the time and date at which the access began and ended;
- 3) The identity, form, and extent of Data accessed, including, but not limited to, whether the individual accessed partial or redacted versions of Data, read-only versions of Data, or editable versions of Data; and
- 4) The nature of the access to Data, including whether Data was edited or shared with any other individual or entity during the duration of the access, and, if so, the identity of the individual or entity.

The Contractor shall retain the written policy and information required in this subsection for the duration of this Contract and a period of no less than five (5) years from the date of termination of this Contract and any Contract extensions. The written policy and information required in this subsection shall be included in the Department's audit and screening abilities as defined in subsection 19.3. The written policy and information required in this subsection shall also be subject to immediate disclosure upon written or oral demand at any time by the Department or its designated agents or auditors.

Failure to compile, retain, and disclose the written policy and information as required in this subsection shall be considered a breach of the Contract. The resulting damages to the Department from a breach of this subsection are by their nature impossible to ascertain presently and will be difficult to ascertain in the future. The issues involved in determining such damages will be numerous, complex, and unreasonably burdensome to prove. The parties acknowledge that these financial consequences are liquidated damages, exclusive of any other right to damages, not intended to be a penalty and solely intended to compensate for unknown and unascertainable damages. The Contractor therefore agrees to credit the Department the sum of \$1,000 for each breach of this subsection.

19.5 Indemnification

The Contractor agrees to defend, indemnify, and hold harmless the Department, the State of Florida, its officers, directors and employees for any claims, suits or proceedings related to a breach of this section. The Contractor will include credit monitoring services at its own cost for those individuals affected or potentially affected by a breach of this section for a two (2) year period of time following the breach.

SECTION 20. PERFORMANCE BOND

Within thirty (30) days of executing the Contract, Contractor shall deliver to the Department's Contract Manager, without additional cost to the Department, a performance bond or, if approved by the Department, a negotiable irrevocable letter of credit or other form of security (collectively the bond) for the performance of work under the Contract in the amount of <<\$(insert three months of contract amount)>>. The bond or letter of credit shall be used to guarantee at least satisfactory performance by Contractor throughout the term of the Contract (including renewal years). The bond shall be annually maintained throughout the term of the Contract, issued by a reliable surety company which is licensed to do business in the State of Florida, and otherwise approved by the Department, and must include the following conditions:

- 1) Obligee: The Department shall be named as the obligee/beneficiary of the bond. Contractor's bond will provide that the insurer or bonding company shall be obliged to provide performance or payment remuneration directly to the Department.
- 2) Notice of Attempted Change: The Contractor shall, or shall cause the surety company to, provide the Department with thirty (30) Calendar Days prior written notice of any attempt to cancel or to make any other material change in the status, coverage, or scope of the required bond or of Contractor's failure to pay bond premiums.
- 3) Premiums: The Department shall not be responsible for any premiums or assessments on the bond.
- 4) Purpose of Bond: The bond is to protect the Department and the State against any loss sustained, due in whole or in part, by the Contractor's termination of the services constituting the purpose of the Contract. Such termination may be caused by Contractor's bankruptcy or any other termination of services stemming from the actions or inactions of Contractor. Such remedy shall not constitute a waiver of any other remedy available to the Department by law.

No compensation shall be due to the Contractor until the performance bond is in place and approved by the Department in writing.

Upon execution of the Contract and by each yearly anniversary of the Effective Date, the Contractor shall provide the Department with a surety bond continuation certificate or other acceptable verification that the bond is valid and has been renewed for an additional year. As an alternative to the surety bond described in this section, the Contractor may use an irrevocable, letter of credit on an annually renewable basis, which in the reasonable judgment of the Department, provides substantially equivalent protection.

SECTION 21. NO OFFSHORING AFFIDAVIT

Unless otherwise agreed in writing, the Contractor and its subcontractors will not perform any of the Services from outside of the United States, and the Contractor will not allow any State of Florida Data to be sent by any medium, transmitted or accessed outside of the United States.

The Contractor agrees that a violation of items listed above will result in immediate and irreparable harm to the Department and will entitle the Department to a credit of \$50,000 per violation, with a total cap of \$500,000 per event. This credit is intended only to cover the Department's internal staffing and administrative costs as well as the diminished value of Services provided under the Contract and will not preclude the Department from recovering other damages it may suffer as a result of such violation. For purposes of determining the damages due hereunder, a group of violations relating to a common set of operative facts (e.g., same location, same time period, same offshore entity) will be treated as a single event. A violation of this provision will also entitle the Department to recover damages, if any, arising from a breach of this section and constitutes an event of default.

Notwithstanding any provision of this Contract to the contrary, the Contractor shall notify the Department as soon as possible and in all events within one (1) business day in the event it discovers any Data is breached, any unauthorized access of State of Florida Data occurs (even by persons or companies with authorized access for other purposes), any unauthorized transmission of Data or any credible allegation or suspicion of a material violation of the above. This notification is required whether the event affects one employee/retiree or the entire population. The notification shall be clear and conspicuous and include a description of the following:

- (a) The incident in general terms.
- (b) The type of personal information that was subject to the unauthorized access and acquisition.
- (c) The number of individuals who were, or potentially have been affected by the breach.
- (d) The actions taken by the Contractor to protect the Data information from further unauthorized access. However, the description of those actions in the written notice may be general so as not to further increase the risk or severity of the breach.

Upon becoming aware of an alleged security breach or security incident, the Contractor Security Officer shall set up a conference call with the Department's Contract Manager. The conference call invitation shall contain a brief description of the nature of the event. When possible, a thirty (30) minute notice shall be given to allow Department personnel to be available for the call. If the designated time is not practical for the Department, an alternate time for the call shall be scheduled. All available information shall be shared on the call. The

Contractor shall answer all questions based on the information known at that time and shall answer additional questions as additional information becomes known. The Contractor shall provide the Department with final documentation of the incident including all actions that took place. If the Contractor becomes aware of a security breach or security incident outside of normal business hours, the Contractor shall notify the Department's Contract Manager and, in all events, within one (1) business day.

SECTION 22. PREFERRED PRICING AFFIDAVIT

Contractor recognizes and acknowledges that the price indicated in this Contract is a guaranteed maximum and that the Department expects to benefit from any changes in pricing and/or fees over the course of the Contract period.

Contractor's fees under this Contract shall not exceed any in effect for substantially similar services provided by Contractor to any other organization. If during the term of the Contract, Contractor implements or provides any other client, whether a public or private entity, more favorable pricing than the pricing in this Contract for such substantially similar services, then Contractor agrees to offer equivalent pricing terms to the Department. Should the Department accept the offer, the Department and Contractor shall then execute an amendment to this Contract to reflect the change in pricing.

To ensure compliance with this Section, the Contractor shall submit a completed Preferred Pricing Affidavit form to the Department annually. Such a form will be provided to Contractor by the Department for this purpose.

SECTION 23. SPECIFIC APPROPRIATION

The following is the specific state funds from which the state will make payment under the Contract:

- FY 2020/21 – HB5001 – Special Categories – Contracted Services – Line # 2778