A Contract for
Shared Savings Financing of Energy Efficiency Upgrades
For the Development of Energy Efficiency Partnerships

By and Between

[Insert Company Name Here]

and

[Insert Agency Name Here]

for

[Insert Project/Facility Name Here]

[Insert Date Here]
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CONTRACT FOR SHARED SAVINGS FINANCING
OF ENERGY EFFICIENCY UPGRADES

This Contract for Shared Savings Financing of Energy Efficiency Upgrades (this “Contract”) is made and entered into as of the day last signed below, at _________________, in the County of _______________ , State of Florida, by and between ____________________________ ("Company"), having its principal offices at ___________________, and _______________ ("Agency") with its principal offices at ________________, for the purpose of installing certain equipment and providing other services designed to improve energy efficiency and reduce other energy-related operating costs for the Agency.

RECITALS

Whereas, on ______________, 20XX, the Company and the Florida Department of Management Services (DMS) entered into DMS Contract No. [XXX-XXX-XX-X], authorizing Company to perform work for the Agency and other eligible users under sections 252.252(4) and 252.253(5) of the Florida Statutes; and

Whereas, pursuant to the DMS Contract, Agency obtained from Company a Proposal that (i) recommends certain Energy Efficiency Measures (EEMs) at the Facility(s), (ii) summarizes the costs of those EEMs, and (iii) provides a detailed estimate of the amount of cost savings resulting from those EEMs; and

Whereas, the Agency finds that the Company’s life-cycle cost calculations and subsequent cost savings projects were performed in accordance with sections 255.254 and 255.255, Florida Statutes, and chapter 60D-4, Florida Administrative Code; and

Whereas, the Agency finds that the projected cost savings of the specified EEMs are sufficiently greater than the projected costs to make feasible a contract, in accordance with sections 255.252(4) and 255.253(5), Florida Statutes, in which the Agency splits the resulting cost savings with the Company over a specified term in exchange for the installation, financing, maintenance, and monitoring of the EEMs; and

Whereas, the Parties desire that Company install the EEMs at the Facility(s) in accordance with and subject to the terms set forth in this Contract.

Now, Therefore, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Agency and Company agree as follows:
SECTION 1. DEFINITIONS.

These terms have the meanings specified below unless the context clearly requires otherwise:

“Agency” means the governmental entity which has entered into this Contract, or any governmental entity succeeding to the powers and duties of any of the foregoing pursuant to law or governmental reorganization.

“Annual Reconciliation” means a determination pursuant to Section 5 of this Contract, as to whether an excess or deficit in Cost Savings exists based on the expectations of both Parties.

“Baseline Energy Model” or “Baseline” means Agency’s fuel, energy, or utilities consumption or cost for each Facility prior to the implementation of Energy Efficiency Measures (EEMs). The initial (unadjusted) Baseline Energy Model shall represent the calendar year preceding the commencement date of the Shared Savings Proposal Agreement and is set forth in Attachment F (Baseline Energy Consumption, Costs, and Utility Rates). Adjustments to the Baseline Energy Model shall be made in accordance with Attachment E (Cost Savings Calculations & Baseline Normalization).

“Commencement Date” means the first day of the calendar month after which all of the following events have occurred: (i) all Attachments are in final form and accepted by Agency; (ii) Company has delivered a notice to Agency that it has completed all of the EEMs in accordance with the provisions of Attachment G (Construction Schedule); (iii) Agency has inspected and accepted said installation and operation as evidenced by an executed Attachment J (Agency Certificate of EEM Acceptance); and (iv) Company has demonstrated to Agency that measurement and verification activities are in operation and fully capable of providing data that supports a shared savings transaction in accordance with Attachment L (Measurement & Verification Plan).

“Company” means the contractor identified in the first paragraph of this Contract.

“Cost Savings” means the measured reduction in the cost of energy, fuel, utilities, or documentable operations and maintenance activities, if applicable, created from the implementation of one or more EEMs when compared with the established Baseline Energy Model. The Cost Savings shall be determined in accordance with the formulas and methodologies set forth in Attachment E (Cost Savings Calculations & Baseline Normalization).

“Energy Efficiency Measure” or “EEM” means each of the facility alterations or equipment purchases set forth in Attachment A (Energy Efficiency Measures to Be Implemented by Company), together with any training programs incidental to this Contract, which reduces energy costs, fuel costs, utilities costs, or energy-related operating costs at the Facility(s).

“Equipment” means all items of property described in the Attachment A (Energy Efficiency Measures to Be Implemented by Company).

“Excess Savings” means the amount by which any actual cost savings that exceeds the expected cost savings.
“Facility(s)” means the state-owned buildings as described in the first paragraph of this Contract and reflected on Attachment B (Pre-Existing Equipment Inventory).

“Fiscal Year” means the annual period from July 1st through June 30th.

“Interim Period” means the period from the date the contract is signed until the Commencement Date.

“Legally Available Funds” means funds duly appropriated or otherwise legally available for the purpose of making payments under this Contract.

“Non-A appropriation” means the failure of an appropriation or availability of the Governing body of Agency or the Legislature to appropriate money for any Fiscal Year sufficient for the continued performance by Agency of all of Agency’s obligations under this Contract as evidenced by the passage of a final budget which does not include funding sufficient to pay all payments due.

“Parties” means both the Agency and the Company collectively.

“Shared Savings Proposal” means the detailed study and report performed by Company of the Energy Efficiency Measures, and their costs, savings, and benefits prior to entry of this Contract. The Shared Savings Proposal is attached as Appendix B.

“State Agency” means each state department, departmental unit described in § 20.04, Florida Statutes, commission, regional planning agency, board, district, and authority.

“Term” means the term of this Contract as set forth in Section 3 of this Contract.
SECTION 2. INCORPORATION OF OTHER DOCUMENTS

Section 2.1. Order of Precedence.

This Contract incorporates and makes a part hereof the following documents, listed in their order of precedence in the event of a conflict between any of their terms and conditions:

(a) This Contract
(b) All Attachments and Appendixes listed in the Table of Contents
(c) The DMS Contract [currently XXX-XXX-XX-X] (Appendix A)
(d) The Shared Savings Proposal (Appendix B)

Section 2.2. Shared Savings Proposal.

Company has, under separate agreement, submitted the complete Shared Savings Proposal (Appendix B), which has been reviewed and accepted by Agency. The Shared Savings Proposal includes all Energy Efficiency Measures (EEMs) agreed upon by the Parties.

Section 2.3. Useful Life and Replacement.

Should the term of the contract extend beyond the useful life of any EEM, the Company shall provide for the replacement of the respective equipment during the term of the contract. The useful life of each EEM is identified in Attachment A (Energy Efficiency Measures to Be Implemented by Company).

SECTION 3. TERM OF CONTRACT

Section 3.1. Initial Term; Interim Period.

The Term shall begin on the date this Contract becomes fully executed and, subject to the renewal provision in Section 3.2 and the termination provisions in Section 7, shall expire at the end of Fiscal Year in which the Commencement Date occurred. The Contract shall be effective and binding upon the parties immediately upon the date it is last signed, and the period from such contract execution until the Commencement Date shall be known as the Interim Period.

Section 3.2. Renewals.

The Term shall automatically renew, except for or termination under Section 7, for each successive Fiscal Year subject to the Agency making sufficient annual appropriations based upon the continued realization of cost savings.

SECTION 4. SCOPE OF WORK

Section 4.1. Installation of EEMs.

(a) Company shall not begin the installation of EEMs until Agency has been furnished the necessary bond(s) in accordance with Section 13 of this Contract. In the event the
Company is unable to secure the necessary bond(s), the Company agrees that all work which occurs prior to the delivery of the bond will be performed at risk to the Company.

(b) Company shall install the EEMs pursuant to all requirements and specifications in this Contract and Appendix B. Construction and installation shall proceed in accordance with the Construction Schedule approved by Agency and attached hereto as Attachment G (Construction Schedule). Agency is not obligated to make any payments to the Company until Attachment J (Agency Certificate of EEM Acceptance) has been issued to the Company and the Commencement Date has been duly established in accordance with this Contract (see Section 1).

(c) Company shall furnish revenue-grade metering devices inclusive to all EEMs, or as a separate EEM, for the purpose of measuring actual energy and utility consumption for each individual EEM during the term. Electric meters shall, at a minimum, measure consumption, demand, and power factor and measure data in fifteen (15) minute intervals. These metering devices shall also be furnished with a data collection system, or access to a data collection system, that will be used by both Parties as the basis of the shared savings transaction over the term. The Agency may require connection of the metering devices to an existing data collection system or energy dashboard. The Agency shall approve all metering devices, hardware, software, and deployment strategies in advance.

(d) Company shall perform all tasks/phases under this Contract in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to Section 4.7 and Attachment G (Construction Schedule). Company shall repair and restore to its original condition any area of damage caused by Company's performance under this Contract. Agency reserves the right to direct Company to take certain corrective action if the structural integrity of the Facility(s) or its operating systems are or will be harmed. All costs associated with such corrective action to damage caused by Company's performance of the work shall be borne by Company.

(e) Company shall remain responsible for the professional and technical accuracy of all services performed, whether by Company or its subcontractors or others on its behalf, throughout the term of this Contract.

Section 4.2. Acceptance of EEMs.

(a) When Company considers any one or more EEMs to have been substantially completed in accordance with all contractual requirements, Company shall provide Agency with a written request for Attachment J (Agency Certificate of EEM Acceptance). Within ten (10) business days from receipt of Company’s written request, Agency will make an inspection to determine whether the EEM installation is complete. If Agency determines the EEM installation is not complete, Agency will provide Company with a specific material performance deficiency list of all items that must be corrected or completed before Agency would consider the EEM(s) complete. An executed Attachment J (Agency Certificate of EEM Acceptance) or deficiency list will be provided to Company within fifteen (15) business days from receipt of Company’s written request. If Company receives a deficiency list and once Company has completed all items on the deficiency list,
Company can request a second inspection by Agency to verify the completeness of the EEM installation. Again, the re-inspection shall occur within ten (10) business days and a written response within fifteen (15) business days. When the EEM(s) to be installed is considered complete and the Measurement & Verification of the EEM(s) is fully operational and supporting a shared savings transaction, the Agency will provide the Company Attachment J (Agency Certificate of EEM Acceptance).

(b) The Parties intend that an Attachment J (Agency Certificate of EEM Acceptance) will be executed for each EEM installation as soon as the installation is complete and beneficial use is provided. However, it is anticipated and agreed that Agency may require use of some installed and completed EEMs prior to the completion of all EEMs. In such situations, the Parties will conduct inspections and certificates of acceptance (Attachment J) as described above for such EEMs. Except as specified in Attachment I (Company's Maintenance Responsibilities and Training Plan), any maintenance and repairs due to ordinary wear and tear caused by such use will be made at the expense of Agency.

Section 4.3. Maintenance.

Company shall provide service, repairs, and adjustments to the EEMs pursuant to Attachment I (Company's Maintenance Responsibilities and Training Plan). Agency shall incur no cost obligations to Company for service, repairs, and adjustments, except as set forth in Attachment D (Compensation to Company); provided, however, that when the need for Company maintenance or repairs principally arises due to the negligence or willful misconduct of Agency or any employee or other agent of Agency, and Company can so demonstrate such causal connection, Company may charge Agency for the actual cost of the maintenance or repair insofar as such cost is not covered by any warranty or insurance proceeds. Failure to use the appropriate technical requirements as identified in Attachment A (Energy Efficiency Measures to Be Implemented by Company) and Appendix B (Shared Savings Proposal) will result in automatic rejection and will not be subject to payment. Failure to complete any of the required duties as outlined in this Contract may also result in the rejection of the invoice.

Section 4.4. Records and Data.

(a) Agency has furnished or shall furnish (or cause its suppliers to furnish) to Company, upon its request, all of its records and complete data concerning energy or water usage and related maintenance for the Facility(s) described in Attachment B (Pre-Existing Equipment Inventory). During the Term, Agency will provide Company copies of all energy and water bills relevant to EEMs on a regular basis so that Company may provide the Cost Savings report identified in subsections 4.4(b) and 5.3 below.

(b) The reports to be issued by Company to Agency are more particularly delineated in Section 5. At a minimum, Company shall provide an Annual Reconciliation Report and documentation for quarterly invoices, both of which must be prepare in accordance with Attachment E (Cost Savings Calculations & Baseline Normalization), Attachment F (Baseline Energy Consumption, Costs, and Utility Rates), and Attachment L (Measurement & Verification Plan).
(c) Company shall also furnish Agency with a full set of diagrams, instructions, manuals, reports and other documentation needed to maintain and operate the EEMs.

(d) If this Contract is terminated for any reason, all finished or unfinished documents, data, studies, correspondence, reports and any other products prepared for the purpose of performing this Contract, shall be made available to, or delivered to, Agency for its use before any additional payments are made for any reason.

(e) Company shall be subject to audit by the State or its designee. Agency shall have the right upon reasonable notice to have its employees or agents inspect all of the books and records of the Company relating to this Contract at Company’s principal place of business during Agency’s normal business hours.

(f) If Agency receives a public records request related to the Contract, Company shall be solely responsible for taking whatever action it deems appropriate to legally protect its claim of exemption from the public records law.

Section 4.5. Training.

Company shall conduct the training program described in Attachment I (Company's Maintenance Responsibilities and Training Plan) hereto. The training specified in Attachment I (Company's Maintenance Responsibilities and Training Plan) must be completed before all EEM installation is complete, but on a schedule approved by the Agency. In addition, the Agency may require the Company to perform one training session for each EEM.

Company shall also provide ongoing training whenever needed with respect to updated or altered equipment, including upgraded software as defined by the software manufacturer. Such training shall be provided at no additional cost to Agency.

Section 4.6. Permits and Approvals.

Company shall be responsible for obtaining all governmental permits and approvals as may be required for installation of the EEMs and for the performance of its obligations hereunder. Agency shall cooperate with Company in obtaining all such permits and approvals. In no event shall Agency, however, be responsible for payment of any permit fees. The equipment and the operation of the equipment by Company shall at all times conform to all federal, state, and local code requirements. Company shall furnish copies of each permit or license which is required to perform the work to Agency before Company commences the portion of the work requiring such permit or license.

Section 4.7. Design Requirements.

The EEMs shall be designed and constructed to comply with the Florida Building Codes, DMS Design & Construction Guidelines, the State Energy Management Plan (available from DMS), the National Electric Code, the National Fire Protection Association, the American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE), and other applicable technical and industry standards of design, energy performance, and comfort.
In addition, no EEMs shall prevent compliance with any of the following sustainable building rating systems or national model green building codes outlined in section 255.253(7), Florida Statutes:

(a) The United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system.
(b) The International Green Construction Code (IGCC).
(c) The Green Building Initiative’s Green Globes rating system.
(d) The Florida Green Building Coalition standards.

The services shall incorporate sustainable design strategies and features to the fullest extent possible, consistent with the intent expressed in section 255.252, Florida Statutes, as well as the mission and budgetary requirements of the Agency.

The Company shall bear all costs for architectural and engineering design services.

Section 4.8. Applicability.

Work performed under this Contract will occur in occupied buildings. The Parties agree that continuity of operations and uninterrupted use of the buildings is crucial to the success of this Contract and shall, at the Agency’s request, require work to be performed outside of normal business hours. All utility outages shall be approved in advance by the Agency.

SECTION 5. PAYMENTS TO COMPANY

Section 5.1. Measure Energy Consumption.

Upon the Commencement Date, the Company shall begin the continual measuring of energy and utilities usage of the completed EEMs for the development of invoices to be paid by the Agency. The measurement of energy shall be performed in accordance with Attachment L (Measurement & Verification Plan) and Section 4.1(c).

Section 5.2 Baseline Costs.

Actual savings shall be measured against Baseline costs, which are the expenses the Agency would have incurred had the delivery order not been implemented. The parties agree that Baseline costs shall be calculated in accordance with Attachment E (Cost Savings Calculations & Baseline Normalization) and Attachment F (Baseline Energy Consumption, Costs, and Utility Rates). The Company acknowledges that the development of the Baseline and Cost Savings is and shall be based on the Federal Energy Management Program’s (FEMP) M&V Guidelines: Measurement and Verification for Federal Energy Management Projects version 3.0.

Section 5.3. Calculate Cost Savings.

The Parties will calculate the Cost Savings using the cost savings formula set forth in Attachment E (Cost Savings Calculations & Baseline Normalization), Attachment L
(Measurement & Verification Plan), and the Shared Savings Proposal (Appendix B). The calculation of energy cost savings shall be based upon the measured energy consumption described in Section 5.1 above.

The actual Cost Savings shall be split between the Parties in accordance with the percentage formula identified in Attachment C (Projected Cost Savings & Shared Savings Transaction).

Section 5.4. Invoice Requirements.

The Company agrees to invoice Agency on a quarterly basis. The invoices shall be submitted within thirty (30) days after the end of the quarter. The Agency reserves the right to require the Company’s invoice submissions to conform to the state’s fiscal quarters. The Agency may require the invoice and all support documentation in electronic format and may approve the overall format in advance.

The Company’s invoice(s) shall include all of the following support documentation:

(a) The Baseline costs for the billing period (from the Shared Savings Proposal).
(b) The Normalized Baseline Costs for the billing period (see Attachment E).
(c) The projected costs for the billing period (from the Shared Savings Proposal).
(d) The projected Cost Savings for the billing period (from the Shared Savings Proposal).
(e) The actual Performance Period Costs for the billing period (see Attachment E).
(f) The actual Cost Savings for the billing period.
(g) The amount of excess or deficit Cost Savings for the billing period.
(h) The Company’s portion of the actual Cost Savings for the billing period.
(i) The Baseline energy consumption for the billing period.
(j) The factors, procedures, and calculations, if any, used to normalize and/or adjust the Baseline (see Attachment E).
(k) The measured consumption from each revenue-grade metering device for each day of the billing period.
(l) The demand profile from each revenue-grade metering device for the billing period. Note: the days and weeks of the billing period must be discernable on the demand profile.
(m) Daily cooling degree day (CDD) and heating degree day (HDD) statistics for each facility location for the billing period.
(n) The inspection and maintenance services, if required, performed by the Company on the EEMs during the billing period.

Section 5.5. Annual Reconciliation Report.

The Company shall provide to Agency an annual reconciliation of the Cost Savings. Within sixty (60) days after each year from the Commencement Date, Company will deliver to Agency’s Contract Manager, identified in Section 19.9 below, an Annual Reconciliation Report for such fiscal year, reflecting the amount of actual Cost Savings achieved. The report shall be consistent with and prepared in accordance with Attachment L (Measurement & Verification Plan). The report shall also be reviewed and approved by the Company’s licensed professional engineer.

The report shall address monthly, quarterly, and annual performance data/metrics for all support
documentation items outlined in Section 5.4 of this Contract. The report shall also address the following items:

(a) An overview of the work performed and how the Cost Savings are generated.
(b) Any changes in project scope between the final proposal (including any relevant delivery order modifications) and as-built conditions.
(c) Data by cost savings, energy units, energy cost/unit, and other applicable savings values.
(d) All fuels and commodities for project, such as electric energy, electric demand, natural gas, fuel oil, coal, and water.
(e) A summary of expected Cost Savings for each year of the Contract.
(f) A summary of actual Cost Savings for each year of the Contract.
(g) A description of the impact of any changes between the final proposal (including any relevant delivery order modifications) and as-built conditions based on post-installation results reported in the initial Annual Reconciliation Report.
(i) Confirmation that the detail measurements, monitoring, and inspections conducted in accordance with Measurement & Verification Plan.

Upon delivery of the report and all supporting documentation, Agency will have thirty (30) business days to accept or reject the report. Agency shall provide written notice of such rejection, within the stated acceptance period, specifying the basis of the deficiency. Company shall have twenty (20) business days to cure such deficiency and deliver to Agency a corrected reconciliation report. If the Agency fails to reject any report (including corrected reports) within sixty (60) business days of receipt of all required documentation, Agency shall be deemed to have accepted the report as of the final day of the 60-day business day period, unless a longer acceptance period is mutually agreed upon in writing.

Section 5.6. Agency Payment.

The Agency shall pay the Company up to the amount set forth in Attachment D (Compensation to Company) and will strive to compensate the Company for excess Cost Savings in accordance with Section 5.7. All other payment and contract provisions of section 287.058(1), Florida Statutes, are incorporated herein by reference. In the event Agency fails to make payment within forty (40) days of the due date, Agency shall pay, as late charges, any interest assessed for untimely payment. The interest rate will be the rate set pursuant to section 55.03, Florida Statutes. Agency shall not be required to begin any payments to Company under this Contract unless and until an Attachment J (Agency Certificate of EEM Acceptance) has been issued. Agency shall pay Company pursuant to section 215.422, Florida Statutes.

Section 5.7. Excess/Deficit Cost Savings.

Cost Savings that are lower than those projected in the Shared Savings Proposal will be split between the Parties in accordance with the percentage formula identified in Attachment C (Projected Cost Savings & Shared Savings Transaction). The Agency fully desires to compensate the Company for achieving excess Cost Savings, but circumstances will require the Agency to
seek additional budget authority through a legislative budget amendment. A legislative budget amendment is a lengthy process that will require the excess Cost Savings to be estimated in advance, but the Agency will do everything possible to compensate the Company for excess Cost Savings during the same fiscal year.

Section 5.8. **Current Expense.**

Agency's obligations hereunder constitute a current expense that is payable exclusively from Legally Available Funds and shall not be construed to be debt, liability or obligation within the meaning of any applicable constitutional or statutory limitation or requirement. Neither Agency nor the State nor any political subdivision or agency thereof has pledged any of its full faith and credit or its taxing power to make any payments under this Contract.

**SECTION 6. FISCAL FUNDING**

Section 6.1. **Annual Appropriations.**

If applicable, and in accordance with Florida Statute 255.2502, the State of Florida’s performance and obligation to pay under this contract is contingent upon an annual appropriation of the Legislature.

Section 6.2. **Agency’s Intent to Request Appropriations and Make Payments.**

Agency intends for this Contract to continue until all payments contemplated under Section 5 have been satisfied. Agency agrees to direct the person within such Agency in charge of preparing Agency's budget to include in the budget request for each Fiscal Year the payments becoming due in such Fiscal Year. The Parties acknowledge that appropriation for such payments is a governmental function that Agency cannot contractually commit the governing body of Agency to perform and this Contract does not constitute such a commitment. However, Agency reasonably believes that money in an amount sufficient to make all payments can and will lawfully be appropriated and made available to Agency for full and faithful performance.

Section 6.3. **Notice of Non-Appropriation.**

Agency shall, upon learning that sufficient funds will not be available to continue its full and faithful performance under this Contract, provide prompt written notice to Company of such event (“Notice of Non-Appropriation”).

Section 6.4. **Return of Equipment.**

Upon termination for Non-Appropriation under Section 7.1 or 7.2, Agency shall no longer be responsible for the payment of any additional payments coming due in succeeding Fiscal Years. However, Company may by written notice to Agency, and, if Agency is a State Agency, also to the Chief Financial Officer (CFO), request that Agency, within thirty (30) days of such written notice, cause all equipment in an EEM Group that Agency is no longer responsible for the payment of to be delivered to Company or Company's designee at a place in the State designated by Company.
Section 6.5. **Company’s Rights if Equipment is Not Returned.**

The Parties agree that there is no intention to create under this Contract a right in Company to dispossess Agency involuntarily of the use of the EEMs or any underlying equipment. Company hereby irrevocably waives any right to specific performance of Agency’s covenant to return possession of the equipment to Company. If Agency fails or refuses to voluntarily return such equipment to Company as provided in Section 6.4, then Company shall have the right, to the extent permitted by law, to obtain a judgment against Agency from Legally Available Funds for compensatory damages in the amount of the then applicable Principal Balances as shown on the applicable Attachment D (Compensation to Company). If the equipment or any portion of it has been damaged beyond repair due to the sole fault of the Agency, the Agency shall pay the applicable Principal Balance of the damaged or destroyed equipment as set forth in the Schedule relating thereto to Company only to the extent not covered by any insurance obtained by Agency.

Section 6.6. **No Waiver of Sovereign Immunity.**

Nothing herein shall be construed as waiving the sovereign immunity of the State of Florida or any agency or instrumentality thereof.

**SECTION 7. TERMINATION**

Section 7.1. **Termination for Non-Appropriation.**

This Contract shall immediately terminate with respect to each EEM for which a Non-Appropriation has occurred. The termination shall be effective as of the last day for which funds were appropriated and Company may then pursue its rights under Section 6 above. If any payments are due after Notice of Non-Appropriation has occurred, then the term will be extended and renewed only if: (a) an interim or emergency budget implemented by the governing body of Agency pending enactment of a final budget makes available to Agency money that may legally be used to make payments during such period; or (b) sums are otherwise available to make such payments.

Section 7.2. **Company Option to Terminate Balance of EEMs.**

In the event of a termination under Section 7.1 above, Company may elect to terminate this Contract with respect to all, but not less than all, of the remaining EEMs. This election shall be made by written notice to Agency within thirty (30) days after the Non-Appropriation has occurred and shall be effective upon the last day of the Fiscal Year for which funds were not appropriated. Upon the effective date of the termination, Agency shall pay to Company any payments and other amounts that are due and have not been paid at or before the end of its then current Fiscal Year with respect to this Contract.

Section 7.3. **Termination Upon Default.**

This Contract is also subject to termination upon the occurrence of an event of default, as provided in Section 14 below.
Section 7.4. **Effect of Termination.**

No EEM Group Schedule shall be executed after any termination due to Non-Appropriation or Event of Default.

**SECTION 8. WARRANTIES**

Section 8.1. **Equipment Warranties.**

Company covenants and agrees that all materials and equipment to be installed as part of this Contract shall be new, in good and proper working condition and protected by appropriate original equipment manufacturer (OEM) written warranties covering all parts and equipment performance. Company further agrees to deliver to Agency for inspection and approval, all such written warranties and to obtain extended OEM warranties for a minimum of ____ [at the discretion of Agency], and which shall be attached and set forth as Attachment K (Equipment Warranties).

All warranties shall be transferable and extend to Agency. The warranties shall specify that only new parts shall be used and installed when repair is necessary. The warranties shall be in force for a minimum of one year from the Commencement Date.

Notwithstanding the above, nothing in this Section shall be construed to alleviate/relieve Company from complying with its obligations to perform under all terms and conditions of this Contract and as set forth in all attached Schedules.

Section 8.2. **Labor Warranties.**

Company warrants that all work performed under this Contract complies with customary, reasonable, and prudent standards of care in accordance with standards in the industry and are performed in a professional manner and consistent with Agency’s specifications and standards.

**SECTION 9. INDEMNIFICATION AND LIMITATION OF LIABILITY**

Section 9.1. **Indemnification by Company.**

Company shall hold and save Agency, the State of Florida, its officers, agents, and employees harmless against claims by third parties resulting from Company’s breach of this Contract or Company’s negligence.

Section 9.2. **Indemnification by Agency.**

Both Parties recognize that Agency, as an agency of the State of Florida, is prohibited from entering into indemnification agreements. Subject to that prohibition, the Parties agree that Company shall not be responsible for damages resulting solely and exclusively from Agency’s negligence.
Section 9.3. Limitation of Liability.

Neither Party shall be liable to another for special, indirect, consequential or punitive damages, even if the Party has been advised that such damages are possible. No Party shall be liable for lost profits, lost revenue, or lost operating savings. Notwithstanding the foregoing, nothing in this section will be construed to limit any of the remedies afforded to Agency under Rule 60A-1.006(3), Florida Administrative Code.

SECTION 10. OWNERSHIP

Section 10.1. Ownership of Certain Proprietary Property Rights.

Agency shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the EEMs. Company shall grant to Agency all rights for the duration of this Contract for any and all software or other intellectual property rights necessary for Agency to continue to operate, maintain, and repair the EEMs in a manner that will yield maximal consumption reductions.

Section 10.2. Ownership of Existing Equipment.

Ownership of the equipment and materials presently existing at the Facility(s) at the time of execution of this Contract shall remain the property of Agency even if it is replaced or its operation made unnecessary by work performed by Company pursuant to this Contract. Company shall be responsible for the disposal of all equipment and materials designated by Agency as disposable off-site in accordance with all applicable laws and regulations regarding such disposal.

Section 10.3. Ownership of Installed Equipment; Risk of Loss.

Upon the issuance of an Attachment J (Agency Certificate of EEM Acceptance), the Company shall retain all legal title to and ownership of all furnished equipment until the following date: ________ [subject to negotiation]. Upon this date, the Company shall take all actions necessary to vest title and ownership of all underlying equipment with Agency. Prior to this date, the risk of loss or damage to all items shall be the responsibility of Company, unless the loss or damage results from negligence by the Agency, and the Company shall be responsible for filing, processing, and collecting all claims.

Section 10.4. Patent and Copyright.

Company, without exception, shall indemnify and hold harmless Agency and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process or article supplied by Company. Company has no liability when such claim is solely and exclusively due to the combination, operation or use of any article supplied hereunder with equipment or data not supplied by Company or is based solely and exclusively upon Agency’s alteration of the article. Agency will provide prompt written notification of a claim of copyright or patent infringement and will afford Company full
opportunity to defend the action and control the defense. Further, if such a claim is made or is pending Company may, at its options and expenses procure for Agency the right to continue use of, replace or modify the article to render it non-infringing. (If none of the alternatives are reasonably available, Agency agrees to return the article on request to Company and receive reimbursement, if any, as may be determined by a court of competent jurisdiction.) If Company uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the negotiated prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

SECTION 11. FACILITIES MAINTENANCE AND EQUIPMENT SERVICES

Section 11.1. Conservation Procedures.

Agency agrees that it shall adhere to, follow and implement the conservation procedures and methods of operation to be set forth on Attachment H (Agency’s Maintenance Responsibilities).

Section 11.2. Changes to EEMs and Facility(s) by Agency.

To the extent that Company is responsible for maintenance under Section 4.3, Agency shall not move, remove, modify, alter, or change in any way the EEMs or any part thereof without the prior written approval of Company, which consent shall not be unreasonably withheld, except as set forth in Attachment H (Agency’s Maintenance Responsibilities). Notwithstanding the foregoing, Agency may take reasonable steps to protect an EEM if, due to an emergency, it is not possible or reasonable to notify Company before taking any such actions. In the event of such an emergency, Agency shall take reasonable steps to protect the EEM from damage or injury and shall follow instructions for emergency action provided in advance by Company. Agency agrees to maintain the Facility(s) in good repair and to protect and preserve all portions thereof that may in any way affect the operation or maintenance of the EEM. If Company contends that Agency is not performing maintenance responsibilities in accordance with Attachment H (Agency’s Maintenance Responsibilities), or that Agency has made any other material changes, including a change in manner of use, hours of operation for the equipment, permanent changes in the comfort and service parameters, occupancy or structure of the Facility(s), types and quantities of equipment at the Facility(s), then Company shall submit a report to Agency and Agency shall determine what, if any, adjustments to Baseline will be made.

Section 11.3. Changes to EEMs by Company.

Notwithstanding anything to the contrary in this Contract or elsewhere, Company shall at all times have the right, subject to Agency’s prior written approval, which approval shall not be unreasonably withheld, to modify the EEM, revise any procedures for the operation of the equipment or implement other saving actions in the Facility(s), provided that (i) such modifications or additions to, or replacement of the EEM, and any operational changes, or new procedures are necessary to enable Company to achieve expected Cost Savings or Excess Savings at the Facility(s) and; (ii) any cost incurred relative to such modifications, additions, or replacement of the EEM, or operational changes or new procedures shall be the responsibility of Company. All modifications, additions, or replacements of the EEM or revisions to operating procedures shall be made by written amendment to this Contract.
SECTION 12. PROPERTY/CASUALTY/INSURANCE

Section 12.1. Insurance.

At all times during the Term, Company shall maintain in full force and effect all insurance coverages customary for companies in its industry of comparable size, including: (1) Workmen's Compensation Insurance sufficient to cover all of the employees of Company working to fulfill this Contract, and (2) Casualty and Liability Insurance on the EEMs Company delivers and Liability Insurance for its employees and the possession, operation, and service of the underlying equipment. The limits of such insurance shall be not less than ___________________ for injury to or death of one person in a single occurrence and ___________________ for injury to or death of more than one person in a single occurrence and ___________________ for a single occurrence of property damage. Such policies shall name Agency as an additional insured.

Prior to commencement of work under this Contract, Company will be required to provide Agency with current certificates of insurance specified above. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed until at least thirty (30) days' prior written notice has been given to Agency.

The policies for Bodily Injury and Property Damage Liability Insurance shall be written to include Contractual Liability Insurance to protect Company against claims from the operations of subcontractors. Certificates of Company's insurance containing evidence of the Hold Harmless Clause protecting the State shall be filed with the State and shall be subject to its approval for adequacy of protection.

Section 12.2. Damage.

Company shall be responsible for (i) any damage to the equipment to be installed or to any other property at the Facility(s) and (ii) any personal injury where such damage or injury occurs as a result of Company's performance under this Contract, but only to the extent caused by the acts or omissions of Company.

SECTION 13. BONDS

Section 13.1. Payment and Performance Bonds.

Agency shall be provided with the following bonds, within 30 days of the date of this Contract:

Within 30 days of the date of this Contract, Company shall furnish Agency with a [100%] Performance Bond and a [100%] Labor and Material Payment Bond, each based on the amount of $[insert bond amount here]. The Agency shall either specify or approve the amount of the bond(s) here prior to execution of this Contract. The bond(s) shall remain in effect until all EEMs have been accepted by Agency as provided in Attachment J (Agency Certificate of EEM Acceptance).
Section 13.2. **Bond Provisions.**

The following provisions shall apply to the bond(s) unless specified otherwise:

(a) Agency shall be named as the beneficiary of all bonds. Company’s bond(s) shall provide that the insurer or bonding company shall pay losses suffered by Agency directly to Agency unless specified otherwise in writing by Agency.

(b) Company or its insurer shall provide Agency thirty (30) days prior written notice that the bond(s) has been renewed together and of any attempt to cancel or to make any other material changes in the status, coverage, or scope of the required bond or of Company's failure to pay bond premiums.

(c) The insurer or bonding company shall waive notice of any alteration or extension of time made by the Agency.

(d) Company shall follow section 255.05 “Bond of contractor constructing public buildings; form; action by materialmen” of the Florida Statutes.

(e) No payments shall be made to Company until the bonds are in place as per section 255.05, Florida Statutes.

(f) The cost of bond(s) shall be reflected as a separate line item project cost.

(g) To be acceptable to Agency as surety for bond(s), the insurer or bonding company shall:

   (i) Have a currently valid Certificate of Authority, issued by the State of Florida, Department of Financial Services, authorizing it to write surety bonds in Florida.

   (ii) Have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31, United States Code.

   (iii) Be in full compliance with the provisions of the Florida Insurance Code.

   (iv) Have a minimum Best's Policyholder Rating of A- or Performance Index Rating of VI from Best's Key Rating Guide.

(h) Company’s bond(s) shall provide that upon Company being in default or placed by Agency in default, the insurer or bonding company shall pay all laborers, subcontractors, and suppliers for all furnished labor and materials that remains unpaid.

(i) Company’s bond(s) shall provide that upon Company being in default or placed by Agency in default, the insurer or bonding company shall respond as follows:

   (i) **For EEMs where installation work has commenced:** The insurer or bonding company shall pay the costs to complete the EEM equipment installation in accordance with all terms and conditions of this Contract and return the Facility(s) to a safe, clean, fully-
For these situations, the insurer or bonding company shall either:

- Complete the Contract in accordance with its terms and conditions, or
- Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination of the lowest responsible bidder, or if the Agency elects, arrange for a Contract between such bidder and Agency, and make available as work progresses sufficient funds to pay the cost of completion less the balance of the Contract price. The term "balance of the Contract price", as used in this paragraph, shall mean the total amount payable by Owner to Company under the Contract and any amendments thereto, less the amount properly paid by Owner to Company.

(ii) For EEMs where installation work has not commenced: The insurer or bonding company may pay the lower of the following costs:

- The contract value of the equipment and installation work for those EEMs where installation work has not commenced, or
- The cost for Agency to purchase outright all underlying equipment and materials for the EEMs where installation work has commenced, including those EEMs that have been completed. For this option to be accepted by Agency, the terms of purchase with Company or Company’s creditors must be finalized in advance.

SECTION 14. EVENTS OF DEFAULT

Section 14.1. Default.

The following are events of default under this Contract:

(a) Any failure by either Party to pay any payment required to be paid when due. A State Agency’s failure to pay for reason of Non-Appropriation shall not constitute an event of default, and shall be governed by Section 6 of this Contract.

(b) Any failure by either Party to observe and perform any material covenant, condition, or agreement on its part to be observed or performed hereunder or under this Contract, other than as referred to in Clause (a) of this Section.

(c) Company initiates a proceeding in any court, seeking liquidation, reorganization, debt arrangement, dissolution, winding up, appointment of trustee, receiver, custodian, or the like for substantially all of its assets, and such proceeding continues undismissed, unstayed, and in effect for a period of sixty (60) consecutive days; or an order for relief is entered in an involuntary case under the federal bankruptcy laws or other similar laws now or hereafter in effect.
SECTION 15. REMEDIES UPON DEFAULT

Section 15.1. Opportunity to Cure Defaults.

Each Party shall have a period of forty (40) days after being notified of an event of default to cure said default, provided that the Party has not already failed to cure a default under the terms of this Contract.

Section 15.2. Remedies upon Default by Agency.

If a default by Agency is not cured in accordance with Section 15.1, Company may, without a waiver of other remedies which exist in law or equity, exercise all remedies available at law or in equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by Agency, and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy.

Section 15.2. Remedies Upon Default by Company.

If a default by Company is not cured in accordance with Section 15.1, Agency shall have the following remedies in law or equity:

(a) Agency may exercise any and all remedies at law or equity, or institute other proceedings, including, without limitation, bringing an action or actions from time to time for specific performance, and/or for the recovery of amounts due and unpaid and/or for damages, which shall include all costs and expenses reasonably incurred in exercise of its remedy,

(b) Agency may take any and all steps necessary to cure Company's default including the hiring or contracting of third parties to fulfill Company's obligations. In the event Agency takes any action to effect such cure, Company shall be obligated to reimburse Agency for Agency's costs and expenses, including cost of cover pursuant to Rule 60A-1.006 (3), F.A.C.

(c) [insert liquidated damages here, if any]

SECTION 16. ASSIGNMENT

Section 16.1. Assignment by Company.

Company acknowledges that Agency is induced to enter into this Contract by, among other things, the professional qualifications of Company. Company agrees that neither this Contract nor any right or obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of Agency; provided Company can without prior approval from Agency assign this Contract to its parent or affiliate companies.

Company may, with prior written approval of Agency, which consent shall not be unreasonably withheld, delegate its duties and performance under this Contract, and/or utilize subcontractors, provided that any assignee(s), deleege(s), or subcontractor(s) shall fully comply with the terms of this Contract. Notwithstanding the provisions of this paragraph, Company shall remain jointly
and severally liable with its assignees(s) or transferee(s) to Agency for all of its obligations under this Contract.

Section 16.2. Assignment by Agency.

Agency may transfer or assign this Contract and its rights and obligations herein to a successor or purchaser of the Facility(s) or an interest therein subject to the prior written approval of Company. If Company rejects new assignee, Agency will continue to make the payments associated with this Contract or Agency can pay the remaining amount of the Company’s initial equipment and installation costs at the affected Facility(s), depreciated in a straight-line fashion since the date Agency acceptance and assuming no salvage value. Notwithstanding the foregoing, Agency’s rights and responsibilities may be transferred in the event that the agency/department that originally executed this Contract is transferred, moved or absorbed by another State of Florida entity to such succeeding entity.

SECTION 17. ARBITRATION

Section 17.1. Arbitration.

Any dispute, controversy, or claim arising out of or in connection with, or relating to this Contract, or any breach or alleged breach hereof, may, upon the agreement of both Parties, be submitted to and settled by arbitration in the State of Florida, in conformance with the rules of the American Arbitration Association then in effect for commercial disputes (or at any other place or under any other form of arbitration mutually acceptable to the Parties). The expenses of the arbitration shall be borne equally by the Parties to the arbitration, provided that each Party shall pay for and bear the cost of its own experts, evidence, and counsel.

SECTION 18. REPRESENTATIONS AND WARRANTIES

Section 18.1. Mutual Representations.

Each Party warrants and represents to the other that:

(a) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;

(b) its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;

(c) its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or

(d) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations,
rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

Section 18.2. Agency Representations.

Agency hereby warrants and represents that:

(a) it has provided or shall provide timely to Company, all records relating to energy/water-related maintenance of Facility(s) requested by Company and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects; and

(b) except as disclosed to Company, it has not entered into any contracts or agreements with other entities regarding the leasing of energy efficiency related equipment or the provision of energy management services for the Facility(s) or with regard to servicing any of the related equipment located in the Facility(s).

Section 18.3. Company Representations.

Company hereby warrants and represents that:

(a) before commencing performance of this Contract it shall have (i) become licensed or otherwise permitted to do business in the State of Florida, and (ii) provided proof and documentation of required insurance pursuant to Section 12, and (iii) made available, upon reasonable request, all documents relating to its performance under this Contract, including all contracts and subcontracts entered into;

(b) it shall use qualified subcontractors and delegees, licensed and bonded in this state to perform the work so subcontracted or delegated pursuant to the terms hereof;

(c) it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to perform its obligations under this Contract.

SECTION 19. MISCELLANEOUS

Section 19.1. Waiver of Liens.

Company will obtain and furnish to Agency a Waiver of Liens from each vendor, material manufacturer, and laborer in the supply, installation and servicing of each EEM. Should liens or claims be filed against the Facility(s) by reason of Company's acts or omissions, Company shall cause same to be discharged by bond or otherwise within ten (10) days after filing.

Section 19.2. Compliance with Law and Standard Practices.

Company shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, in accordance with sound engineering and safety practices, and in compliance with any and all reasonable rules and policies of Agency.
relative to the Facility(s).

Company shall not use, store, dispose of or otherwise handle any Hazardous Substance (as defined in 42 U.S.C. Sections 9601, 9603, 6921, 7412, 49 U.S.C. Sections 1802 and 33 U.S.C. Sections 1321 and 1317 as now or hereinafter amended) or Hazardous Material in or on the Facility(s) except in a lawful manner and so as not to cause Agency any cost, loss, obligation or liability or expose Agency to any claim or suit with respect to same. "Hazardous Materials" shall mean petroleum, or any fraction thereof, asbestos, polychlorinated biphenyls, or any other substance identified either as a "hazardous substance", "hazardous waste", "pollutant", "contaminant" or other similar term in any applicable federal, state or local law or regulation, as such law or regulations may be now or hereafter amended.

Section 19.3. Independent Capacity of Company.

The Parties agree that Company, and agents and employees of Company, in the performance of this Contract, shall act in an independent capacity and not in any way as officers, employees, partners, or agents of Agency.

Section 19.4. No Waiver.

The failure of Company or Agency to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of Company or Agency.

Section 19.5. Severability.

In the event that any clause or provision of this Contract or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Contract unless the result would be manifestly inequitable or unconscionable.

Section 19.6. Complete Contract.

This Contract, including all Attachments and Appendices attached hereto, when executed, shall constitute the entire Contract between both Parties and this Contract may not be amended, modified, or terminated except by a written Contract signed by the Parties.

Section 19.7. Further Documents.

The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

Section 19.8. Applicable Law.

This Contract and the construction and enforceability thereof shall be interpreted under the laws of the State of Florida.
Section 19.9. Notice.

Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, or delivered to a nationally recognized express mail service, postage prepaid to the address shown below or to such other persons or addresses as are specified by similar notice. Agency’s Contract Manager for this project will serve as liaison for the ongoing administration of this Contract and the resolution of any problems related thereto.

TO COMPANY:  <Company Name, Attention:, Complete address.>
TO AGENCY: <Agency Name, Attention:, Contract Manager Complete address.>

Section 19.10. Statutory Notices and Requirements.

Agency shall consider the employment by any Company 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 bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Company, 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.

Wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto will be adjusted to exclude any significant sums by which Agency determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All contract adjustments must be made within one (1) year following the end of the Contract.

Company warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Company to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Company any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, Agency shall have the right to terminate this Contract without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.


If, under this Contract, Company is providing services and is acting on behalf of the Agency as provided under section 119.011(2), Florida Statutes, the Company, subject to the terms of section 287.058(1)(c), Florida Statutes, and any other applicable legal and equitable remedies, shall:
(i) Keep and maintain public records that ordinarily and necessarily would be required by the Agency in order to perform the service;

(ii) Provide the public with access to public records on the same terms and conditions that the Agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law;

(iii) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law;

(iv) Meet all requirements for retaining public records and transfer, at no cost, to the Agency all public records in possession of the Company upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements, and all records stored electronically must be provided to the Agency in a format that is compatible with the information technology systems of the Agency.

The Agency may unilaterally cancel this Contract for refusal by the Company to allow public access to all documents, papers, letters, or other material made or received by the Company in conjunction with this Contract, unless the records are exempt from s. 24(a) of Article I of the State Constitution and section 119.07(1), Florida Statutes.


Neither Party will be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in the United States; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party (“Force Majeure Events”); provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. Performance times shall be considered extended for a period of time equivalent to the time lost because of any such delay, provided that in the event Company is delayed in its performance by reason of such cause, no such extension shall be made unless notice thereof is presented by Company to Agency in writing within ten (10) business days after the start of the occurrence of such delay, no payment shall be made for any fees or expenses incurred by Company by reason of such delay, and Company shall use best efforts to perform its obligations during such delay, and notify Agency of its abatement or cessation.

Section 19.13. Background Check Requirements.

(a) Background Screening

In addition to any background screening required by the Company as a condition of employment, the Company shall 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,” directly performing services under this Contract whether or not the Person has access to state of Florida Data, as well as those persons who are not performing services under this Contract but have access, including indirect access, to state of Florida Data. “Access” means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network. “Data” means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions, whether said information is confidential information or personal information. Data may be in any form, including but not limited to, in storage media, stored in the memory of the computer, in transit or presented on a display device, or a hard copy.

The minimum background check process shall 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 Company agrees that each Person will be screened as a prior condition for performing services or having access to state of Florida Data. The Company is responsible for any and all costs and expenses in obtaining and maintaining the criminal background screening information for each Person described above. The Company shall maintain documentation of the screening in the Person’s employment file.

(i) Disqualifying Offenses/Criminal Finding: A “Criminal Finding” is defined as a misdemeanor or felony conviction, plea of nolo contendere, plea of guilty, or adjudication of guilt withheld record for any disqualifying offense listed below. If at any time it is determined that a Person has a Criminal Finding within the last ten (10) years from the date of the court’s determination for the crimes listed below, or their equivalent in any jurisdiction, the Company is required to immediately remove that Person from any position with access to state of Florida Data or directly performing services under this Contract. The disqualifying offenses are:

- Computer related or information technology crimes
- Fraudulent practices, false pretenses and frauds, and credit card crimes
- Forgery and counterfeiting
- Violations involving checks and drafts
- Felony theft

If the Company removes a Person from a position under this provision due to a Criminal Finding, it may obtain information regarding the incident and determine whether that Person should continue providing services under this Contract or have access to state of Florida Data. The Company shall consider the following factors only
in making the determination: 1) the nature and gravity of the offense, 2) the amount of time that lapsed since the offense, 3) the rehabilitation efforts of the person, and 4) the relevancy of the offense to the job duties of the Person. During the process of collecting the information and making a decision, the Company shall not allow the Person to perform services or have access to state of Florida Data.

(ii) **Self-Disclosure:** The Company shall ensure that all Persons have a responsibility to self-report to the Company within three (3) calendar days a Criminal Finding or an updated court disposition of a Criminal Finding. The Company shall notify the Agency’s Contract Manager within 24 hours of all details concerning any Criminal Finding or updated court disposition of such Criminal Finding as reported by a Person. The Company shall immediately assess whether to disallow that Person access to any state of Florida Data or from directly performing services under the contract. Additionally, the Company shall require that the Person complete an annual certification that they have not received any additional Criminal Findings and shall maintain that certification in the employment file.

(iii) **Refresh Screening:** The Company shall ensure that all background screening is refreshed every five (5) years from the time initially performed for each Person during the term of the Contract.

(b) **Duty to Provide Secure Data**

The Company shall 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 Company shall also comply with all other state and federal rules and regulations regarding security of information.

(c) **Department’s Ability to Audit Screening Compliance and Inspect Locations**

The Agency reserves the right to audit the Company’s background screening process upon two days prior written notice to the Company during the term of this Contract. The Agency shall have the right to inspect the Company’s work area and/or location upon two (2) business days prior written notice to the Company to ensure that access to the state of Florida Data is secure and in compliance with this Contract and all applicable state and federal rules and regulations.

(d) **Indemnification**

The Company agrees to defend, indemnify and hold harmless the Agency, the state of Florida, and its officers, directors and employees, for any claims, suits or proceedings alleging a breach of the state of Florida Data. The Company shall include credit monitoring services at its own cost for those Members affected or potentially affected by a breach of the state of Florida Data for a two (2) year period following the breach.
IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Contract by their duly authorized officers on the date last executed below

COMPANY:  
By:______________
[Signature]
Title: ____________
(Corporate Seal)
Date: ______________

AGENCY:  
By:______________
[Signature]
Title: ______________
Date: ______________
Attachment A - Energy Efficiency Measures to Be Implemented by Company

Instructions: List the name and address of each Facility where Energy Efficiency Measures (EEMs) will be implemented. The Shared Savings Proposal (Appendix B) must clearly describe the work to be performed and consistently refer to the Facility(s) as referenced here.

Use a separate Schedule A form for each Facility where work will be performed. EEMs that serve multiple facilities shall be reported on a separate Schedule A form.

<table>
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<tr>
<th>Facility Name:</th>
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<td>Address:</td>
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List Energy Efficiency Measures (EEMs) to be installed at this Facility:

<table>
<thead>
<tr>
<th>EEM Identification Number</th>
<th>Description of Energy Efficiency Measure (EEM)</th>
<th>Service Life of EEM (Years)</th>
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Attachment B - Pre-Existing Equipment Inventory

Instructions: List the name and address of each Facility where Energy Efficiency Measures (EEMs) will be implemented. In addition, list all of the existing equipment that comprises the systems and equipment affected, modified, or replaced by the EEMs.

Use a separate Schedule B form for each Facility where work will be performed.

<table>
<thead>
<tr>
<th>Facility Name:</th>
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<tbody>
<tr>
<td>Address:</td>
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<tr>
<td>List of Existing Equipment:</td>
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</table>
Attachment C - Projected Cost Savings & Shared Savings Transaction

Instructions: The information provided here shall represent the cost savings expectations for both Parties. Actual payments to the Company shall be made in accordance with Section 5 of this Contract. All information provided here must be in accordance with Appendix B (Shared Savings Proposal).

<table>
<thead>
<tr>
<th>Year</th>
<th>Energy Cost Savings</th>
<th>Operational Cost Savings</th>
<th>Total Projected Cost Savings</th>
<th>Company Percentage</th>
<th>Total Annual Company Payment</th>
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Instructions: The information provided here shall represent the cost savings expectations for both Parties. Actual payments to the Company shall be made in accordance with Section 5 of this Contract. Annual payments to the Company in excess of the amounts listed here are subject to the specific requirements outlined in Section 5.7 of this Contract. All information provided here must be in accordance with Appendix B (Shared Savings Proposal).

<table>
<thead>
<tr>
<th>Year</th>
<th>Quarter 1 Payment</th>
<th>Quarter 2 Payment</th>
<th>Quarter 3 Payment</th>
<th>Quarter 4 Payment</th>
<th>Total Annual Company Payment</th>
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Attachment E - Cost Savings Calculations & Baseline Normalization

Instructions: Insert the Cost Savings calculations for Year 1 of the Contract on a separate sheet after this Attachment. The Company agrees that the Cost Savings calculations for the term of this Contract shall comply with the requirements outlined here.

Cost Savings under this Contract shall be determined according to the following formula:

\[
\text{Cost Savings} = (\text{Normalized Baseline Cost} - \text{Performance Period Cost}) \pm \text{Adjustments}
\]

The following definitions and methodologies shall apply to the calculation of Cost Savings:

A. Normalized Baseline Cost

The Normalized Baseline Cost is the normalized electrical, fuel, and/or water consumption for the base year multiplied by the prevailing utility rates. This refers to the electrical, fuel, and/or water costs that would have been incurred if the EEMs had not been implemented.

The Normalized Baseline Cost shall be the product of the following:

- The Baseline electrical, fuel, or water consumption as set forth in Attachment H.
- The Utility Rates as defined below.
- The existing operation and maintenance costs, if applicable, that would have been incurred if the EEMs had not been implemented.
- The Baseline Normalization and Adjustments as defined below.

B. Performance Period Cost

The Performance Period Cost is the actual utility consumption for the applicable time period multiplied by the prevailing utility rates. This refers to the electrical, fuel, and/or water costs that have resulted from the implementation of the EEMs.

The Performance Period Cost shall be the product of the following:

- The amount of electrical, fuel, or water consumption during the applicable time period.
- The Utility Rates as defined below.
- The actual operation and maintenance costs, if applicable, resulting from the implementation of the EEMs.
- The Baseline Normalization and Adjustments as defined below.

C. Utility Rates

The Utility Rates used to calculate the Normalized Baseline Cost and the Performance Period Cost shall be the greater of the following two (2) rates:

- The Baseline utility rates with the annual escalations set forth in Attachment F.
• The actual utility rates for the year in which the Cost Savings are measured. In no event shall the Utility Rate used to calculate Cost Savings be lower than base year utility rate with the applicable escalation factor(s).

D. Baseline Normalization

Energy use will be normalized as described here for each billing period. The purpose of Baseline Normalization is to minimize external factors when comparing the Performance Period to the Baseline year. External factors such as changes in weather patterns, occupancy rates, and space usage can impact building energy performance and are outside the control of the Company. The purpose of Baseline Normalization is to ensure that such external factors neither detract nor benefit the Cost Savings calculations.

Two external factors that influence every monthly utility bill are the weather conditions and the meter reading dates during the billing period. In order to address both weather and meter read dates (time) for Baseline Normalization, Cooling Degree Days (CDD) and Heating Degree Days will be used for weather comparisons. CDD/HDD is a function of time and climate. The National Weather Service defines a Degree Day as follows:

“A measure that gauges the amount of heating or cooling needed for a building using 65 degrees as a baseline. Electrical, natural gas, power, and heating, and air conditioning industries utilize heating and cooling degree information to calculate their needs.”

For a given day, the CDD or HDD is calculated as follows depending on whether the mean temperature is above or below the reference temperature of 65°F:

• Cooling Degree Day (CDD) = Daily Mean (average) Temperature – 65
• Heating Degree Day (HDD) = 65 – Daily Mean (average) Temperature

A linear regression shall be performed for the Performance Period electrical or fuel consumption versus CDD and HDD data from the base year. From the linear regression, an adjusted R-squared value and average error shall be calculated for the purpose of adjusting the Cost Savings. The normalization models, calculations, and procedures shall be reviewed by the Company’s licensed professional engineer and approved by the Agency.

CDD and HDD data is available from the National Climatic Data Center website at http://www.nws.noaa.gov/.

The Parties agree that Baseline Normalization applies to weather-dependent EEMs and may not be applicable to every project.

E. Adjustments

The parties agree that adjustments to the Baseline are authorized only to the extent authorized in Section 11 of this Contract or as outlined here.
Attachment F - Baseline Energy Consumption, Costs, and Utility Rates

Instructions: Insert a summary of the Baseline Energy Model as developed under the Shared Savings Proposal Agreement. The summary shall include the monthly energy consumption and cost for the Base year for each EEM, organized by Facility if the scope of work includes more than one Facility. In addition, all applicable Utility Rates for the Base year must also be provided here. All information provided here must be in accordance with Appendix B (Shared Savings Proposal).
Attachment G - Construction Schedule

Instructions: Provide a construction schedule in the form of a Gantt chart that identifies EEMs, tasks for each EEM, predecessors to each task, task duration, EEM duration, and critical paths. The Agency will expect Company to revise the construction schedule throughout the project.
Attachment H - Agency’s Maintenance Responsibilities

Instructions: Insert the Agency’s maintenance responsibilities here.
Attachment I - Company's Maintenance Responsibilities and Training Plan

Instructions: Insert the Company’s maintenance responsibilities and training plan here.
Attachment J – Agency Certificate of EEM Acceptance

I, the undersigned, hereby certify that I am the duly qualified and acting officer of Agency identified below and, with respect to the Energy Efficiency Measures to be installed in accordance with this Contract dated as of ________________, by and between Agency and ________________ ("Company"), represent and warrant that:

1. The equipment described in Attachment A as [insert individual EEM numbers here] purchased from [Company], and properly invoiced, has been delivered and installed in accordance with Agency's Specifications, is in good working order and is fully operational and properly functioning and has been fully accepted by Agency on the _____ day of ________________, ______.

2. Agency certifies that it has inspected the installation and operation of the Energy Efficiency Measures listed on Attachment A, pursuant to Contract Section ___ and that it finds the equipment listed on Attachment A is fully and properly functioning.

Agency: ________________

Signature: ________________

Title: ________________

Date: ________________
Attachment K - Equipment Warranties

Instructions: Insert the warranty documents for all underlying equipment associated with the Energy Efficiency Measures (EEMs) listed on Attachment A of this Contract.
Attachment L - Measurement & Verification Plan

Instructions: A detailed plan for the measurement and verification of actual cost savings shall be attached here. The plan shall comply with Attachments E (Cost Savings Calculations and Baseline Normalization) and Attachment F (Baseline Energy, Consumption, Costs, and Utility Rates). In addition to the requirements listed here, the plan must address the following factors regarding the Measurement & Verification Plan: Who, what, when, where, why, and how.

The Measurement & Verification Plan must specify and provide for continuous metering (sub-metering) as well as connection to the Agency’s energy dashboard or stand-alone system, whichever is specified by the Agency. Actual energy use during the proposed contract term shall be measured for comparison with the baseline energy model for calculating actual cost savings.

The plan must comply with one of the measurement and verification methodologies from *The Federal Energy Management Program’s M&V Guidelines: Measurement and Verification for Federal Energy Management Projects (v.3.0)*. The Agency may at its discretion specify which methodology is used by the Company.

The Agency shall specify which of the following measurement and verification methods from *The Federal Energy Management Program’s M&V Guidelines: Measurement and Verification for Federal Energy Management Projects (v.3.0)* will be used by the Company for purposes of reconciliation throughout the proposed contract term:

- **Option B** – Retrofit Isolation With All Parameter Measurement
- **Option C** – Whole-Building Data Analysis
- **Option D** – Calibrated Simulation

*Note: Option A – Retrofit Isolation With Key Parameter Measurement (i.e., stipulated savings) will not be allowed.*
Appendix A - DMS Term Contract No.: [XXX-XXX-XX-X]

Instructions: Insert a copy of the DMS Shared Savings Contract Here
Appendix B - Shared Savings Proposal

Instructions: Insert a copy of the Shared Savings Proposal Here