

ATTACHMENT A

DRAFT CONTRACT

FOR

**INVESTMENT CONSULTING AND MONITORING SERVICES FOR
OPTIONAL ANNUITY AND RETIREMENT PROGRAMS**

DMS NO: 17/18-050

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), each a "Party" and collectively referred to herein as the "Parties".

The Parties enter into this contract in accordance with the terms and conditions of solicitation DMS-17/18 -050, ITB, Investment Consulting and Monitoring Services for Optional Annuity and Retirement Programs.

The Parties therefore agree as follows:

SECTION 1. DEFINITIONS

Definitions contained in section 287.012, F.S., Rule 60A-1.001, Florida Administrative Code, , PUR 1000, General Contract Conditions, and the PUR 1001 form are incorporated by reference. In the event of a conflict, the definitions listed in this section supersede the incorporated definitions. All definitions apply in both their singular and plural sense.

- 1.1 Confidential Information: Any portion of a Contractor's documents, data or records disclosed relating to its response that the Contractor claims is confidential and not subject to disclosure pursuant to Chapter 119, Florida Statutes, the Florida Constitution, or any other authority and is clearly marked "Confidential."
- 1.2 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.
- 1.3 Contractor:.. The business entity that is awarded a Contract resulting from this ITB.
- 1.4 Department: The Department of Management Services.
- 1.5 Division: The Florida Division of Retirement under the Department of Management Services.
- 1.6 Investment Policy Statement (IPS): A document that outlines general rules, investment goals and objectives for investments and describes the strategies that should employ to meet these objectives. Specific information on matters such as asset allocation, risk tolerance and liquidity requirements are included in an IPS.
- 1.7 Legacy Investment Products: Annuity and mutual fund products, which are no longer receiving current contributions.
- 1.8 Provider Company: Investment service provider with active and/or inactive contracts for annuity and mutual fund investment products.
- 1.9 Senior Management Service Optional Annuity Program (SMSOAP): Pursuant to Section 121.055, Florida Statutes, the SMSOAP is a 403(b), Internal Revenue Code, qualified

defined contribution retirement plan consisting of annuity investment products for State Personnel System Senior Managers and managerial staff of the Florida Legislature, Judicial Branch, Auditor General, and the State Board of Administration.

- 1.10** State University System Optional Retirement Program (SUSORP): Pursuant to Section 121.035, Florida Statutes, the SUSORP is a 403(b), Internal Revenue Code, qualified defined contribution retirement plan consisting of annuity and mutual fund investment products for state university faculty, administrators, and staff and employees participating in the State University System Executive Service.
- 1.11** Statement of Work (SOW): Defines the roles and responsibilities of the Contractor and the Division, work requirements, a work breakdown structure which divides the project scope into distinct tasks, project constraints and assumptions, time and deadline requirements. and defines expected results, deliverables and acceptance criteria, under the resultant contract.
- 1.12** Value Added: Service options provided in conjunction with the services included in the Statement of Work that complement core service offerings without additional cost to the Department.
- 1.13** Value Engineering: A systematic method to improve the "value" of goods or products and services. Value, as defined, is the ratio of function to cost. Value can therefore be increased by either improving the function or reducing the cost.

SECTION 2. TERM

2.1 Initial Term

The initial term of the Contract will be for three (3) years.

2.2 Renewal Term

Upon written agreement, the Contract may be renewed in whole or in part for a period that will not exceed the term of the initial contract at the renewal pricing specified in the initial contract. Any renewal will be in accordance with section 287.057(13) F.S. and is contingent upon the satisfactory performance of the Contractor and subject to the availability of funds.

SECTION 3. PAYMENTS

3.1 Pricing

The Contractor shall adhere to the prices as stated in **Attachment H**, an attachment to the competitive solicitation, which will be incorporated into the Contract.

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

Bills for travel expenses, if explicitly permitted in the contract, must be submitted in accordance Section 112.061, Florida Statutes.

3.4 Final Invoice

Unless renewed or extended, the deliverables of the Statement of Work must be completed by the termination of the contract. The final invoice shall be due no later than 45 days after the contract ends.

3.5 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

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):

4.1 This Contract (**Attachment A**)

4.2 Statement of Work (**Attachment B**)

4.3 Price Sheet(s) (**Attachment H**)

4.4 PUR 1000, General Contract Conditions, which are incorporated by reference, and available at:

<http://www.dms.myflorida.com/content/download/2933/11777/version/6/file/1000.pdf>

SECTION 5. CONTRACT ADMINISTRATION

5.1 Department Contract Administrator

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

Departmental Purchasing
Florida Department of Management Services
4050 Esplanade Way, Suite 335
Tallahassee, Florida 32399-0950
Telephone: (850) 410-1423
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 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:

Joyce Morgan
Chief, Enrollment and Contribution
1317 Winewood Blvd. Bldg. 8
Telephone: (850) 414-6371
Email: Joyce.Morgan@dms.myflorida.com

In the event that the Department changes the 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:

Jane Doe
<Insert vendor name>
<Insert vendor physical address>
Telephone: (850) XXX-XXXX
Email: jane.doe@xxxxxx.com

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 business enterprises in the economic life of the State. The Department 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.

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 Chapter 60A-1, 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 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 30 days of the action being filed. Failure to notify the Department of a legal action within 30 days of the action shall be grounds for termination or nonrenewal of the Contract.

6.3 Suspended, Convicted and Discriminatory Vendor Lists

In accordance with sections 287.042, 287.133, and 287.134, F.S., an entity or affiliate who is on the Suspended Vendor List, Convicted Vendor List or the Discriminatory Vendor List may not perform work as a contractor, supplier, subcontractor, or consultant under the Contract. The Contractor must notify the Department if it or any of its suppliers, subcontractors or consultants have been placed on the Suspended Vendor List, Convicted Vendor List or the Discriminatory Vendor List during the term of the Contract.

6.4 Cooperation with the Inspector General

Pursuant to subsection 20.055(5), F.S., Contractor, and any subcontractor to the Contractor, understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Contractor must provide any information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but will not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor will retain such records for five years after the expiration of the Contract, or the period required by the General Records Schedules maintained by the Florida Department of State, at the Department of State's Records Management website, whichever is longer. The Contractor agrees to reimburse the State of Florida for the reasonable costs of investigation incurred by the Inspector General or other authorized State of Florida official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State of Florida which results in the suspension or debarment of the Contractor. Such costs will include, but will not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees.

SECTION 7. CONTRACTOR CORPORATE STATUS

Pursuant to Section 607.0128, Florida Statutes, the Contractor shall provide the Department with a certificate of status if it is a registered Florida corporation or a certificate of authorization if it is a foreign corporation and shall maintain such status through the life of the Contract. The certificates must be issued by the Florida Department of State and may not contain any qualification as to the entity's existence or authorization to transact business in Florida.

SECTION 8. LIABILITY AND WORKER'S COMPENSATION INSURANCE

This paragraph modifies Section 35 of PUR 1000, General Contract Conditions. 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: workers' compensation and employer's liability insurance per Florida statutory limits (currently \$200,000 per accident, \$200,000 per person and \$500,000 policy aggregate) covering all employees engaged in any Contract work; commercial general liability coverage on an occurrence basis in the minimum amount of \$500,000 (defense cost shall be in excess of the limit of liability), naming the State as an additional insured; and automobile liability

insurance covering all vehicles, owned or otherwise used in the Contract work, with minimum combined limits of \$500,000, including hired and non-owned liability and \$5,000 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 their insurance carrier note the Department as the certificate holder as provided below:

Attn: Shaundra Mitchell
Florida Department of Management Services
Division of Retirement
1317 Winewood Blvd. Bldg. 8
Tallahassee, Florida 32399-1560

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, proprietary, trade secret or otherwise not subject to disclosure pursuant to Chapter 119, Florida Statutes, the Florida Constitution or other authority, the Contractor must simultaneously provide the Department with a separate redacted copy of the information it claims as Confidential and briefly describe in writing the grounds for claiming exemption from the public records law, including the specific statutory citation for such exemption. This redacted copy shall contain the Contract name and number, and shall be clearly titled "Confidential." The redacted copy should only redact those portions of material that the Contractor claims are confidential, proprietary, trade secret or otherwise not subject to disclosure.

9.3 Request for Redacted Information

In the event of a public records or other disclosure request pursuant to Chapter 119, Florida Statutes, 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, Florida Statutes, or other applicable law. If the Department becomes subject to a demand for discovery or disclosure of the Confidential Information of the Contractor under legal process, the Department shall give the Contractor prompt notice of the demand prior to releasing the information labeled "Confidential" (unless otherwise prohibited by 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, proprietary, trade secret, or otherwise not subject to disclosure. 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 answer 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 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

Any intellectual property developed as a result of this Contract will belong to, and be the sole property of, the State of Florida. This provision will survive the termination or expiration of this Contract.

SECTION 11. E-VERIFY

Pursuant to State of Florida Executive Order Number 11-116, the Contractor is required to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system to verify the employment of all new employees hired by the Contractor during the Contract term.

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.

If the Contractor is not enrolled in DHS E-Verify System, it will do so within five days of notice of Contract award, and provide the Contract Manager a copy of its MOU within five days of Contract execution. The link to E-Verify is provided below.

<http://www.uscis.gov/e-verify>

Upon each Contractor new hire, the Contractor shall provide a statement within five days to the Contract Manager identifying the new hire with its E-Verify case number.

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), Florida Statutes, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List 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.

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 the state's prompt payment policies and assisting vendors in receiving payments in a timely manner.. 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 and 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 as determined by the Department. The Department may conduct an audit and review all the Contractor's 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, 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 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 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, 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, independent contractors, leased employees, volunteers, licensees or other person, hereinafter referred to as "Person" or "Persons." Screenings shall be completed for those Persons operating under Contractor's direction who directly perform services under the Contract, whether or not the Person has access to State of Florida Data, and for those Persons who have access to, 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:

- 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; and
- Felony theft.

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 every five (5) years from the time initially performed for each Person during the Term of the Contract.

19.1.3 Annual Certification

The Contractor is required to submit an annual certification demonstrating compliance with the Warranty of Security to the Department by December 31 of each Contract year.

19.1.4 Self-Disclosure

The Contractor shall ensure that all Persons have a responsibility to self-report within three 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 calendar days, any arrest for any Disqualifying Offense. The Contractor shall notify the Contract Manager within 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 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 Access to Data

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 individuals who accessed Data in any way, whether those individuals are authorized Persons or not;
- 2) The duration of the individuals' 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 \$ 5,000.00 for each breach of this subsection.

19.5 Indemnification

The Contractor agrees to defend, indemnify and hold harmless the Department and the State of Florida, including their 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

The Department will not require the Contractor to furnish a performance bond or other form of security for the faithful performance of work under this Contract.

SECTION 21. NO OFFSHORING AFFIDAVIT

Unless otherwise agreed in writing, the Contractor 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 off-shore 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 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), if any unauthorized transmission of Data occurs, or if any credible allegation or suspicion of a material violation of the above. In the event that the security breach or event is discovered outside of normal business hours, notification shall be made by the Contractor to the Department not later than one (1) business day. This notification is required whether the event affects the Data of 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; and
- (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.

SECTION 22. PREFERRED PRICING AFFIDAVIT

Contractor acknowledges and recognizes that the Department wants to take advantage of any improvements in price/fees over the course of the Contract period. To that end, the price indicated in this Contract is a maximum guarantee.

Contractor's fee under this Contract will not exceed the Contractor's total fees then in effect for substantially the same services to any organization with similar services to those in this Contract. During the term of the Contract, if Contractor implements or provides any other client, whether a public or private entity, such pricing with more favorable than the pricing in this Contract, then Contractor agrees to offer equivalent pricing terms to the Department and the Department and Contractor will execute an amendment of this Contract. The Contractor shall submit to the Department, a completed Preferred Pricing affidavit form annually.

SECTION 23. SPECIFIC APPROPRIATION

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

Section 2809, Chapter 2018-9, Laws of Florida, Optional Retirement Program Trust Fund.