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Tallahassee, FL 32399-0950  
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Ron DeSantis, Governor

Jonathon R. Satter, Secretary

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**ATTACHMENT B**

**CONTRACT**

**FOR**

**CHILLER INSPECTION SERVICES**

**CONTRACT NO.: DMS-18/19-005**

**BETWEEN**

**THE STATE OF FLORIDA**

**DEPARTMENT OF MANAGEMENT SERVICES**

**AND**

**<<PARTY NAME>>**

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## Contract

This Contract is between the STATE OF FLORIDA, DEPARTMENT OF MANAGEMENT SERVICES (Department), an agency of the State of Florida with offices at 4050 Esplanade Way, Tallahassee, Florida 32399-0950, and (Contractor) with offices at <insert address>, 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 Invitation to Bid (ITB) No.: DMS-18/19-005, Chiller Inspection Services.

The Parties therefore agree as follows.

### SECTION 1. DEFINITIONS

The following definitions apply in addition to the definitions in the PUR 1000, General Contract Conditions.

- 1.1 Confidential Information:** Any portion of the 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:** The binding agreement resulting from ITB No.: DMS-18/19-005 between the Department and the Contractor and consisting of the Contract Documents set forth in Section 4 herein.
- 1.3 Contract Manager:** The representative designated by the Department who will oversee all aspects of the Contract, monitor performance expectations, and serve as the primary point of contact for the Contractor.
- 1.4 Facilities:** Those facilities for which the Contract shall apply as identified in ATTACHMENT C – FACILITY LIST AND SITE VISITS, an attachment to the competitive solicitation, which is incorporated by reference into this Contract.
- 1.5 Facility Manager:** The local Department representative designated for each Facility who will serve in a contract management capacity as delegated by the Contract Manager.

### SECTION 2. TERM

- 2.1 Initial Term**

The initial term of the Contract will be for five (5) years. The initial Contract term shall begin on July 1, 2019, or on the last date it is signed by all Parties, whichever is later.
- 2.2 Renewal Term**

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

## **SECTION 3. PAYMENTS**

### **3.1 Pricing**

The Contractor shall adhere to the prices as stated in ATTACHMENT D – PRICE SHEETS, an attachment to the competitive solicitation, which is incorporated by reference into the Contract.

### **3.2 Price Adjustments**

Price adjustments due to additions and/or deletions of chillers shall be pursuant to an amendment to the Contract. If renewal of the Contract is anticipated after the initial term, the Department may renegotiate with the Contractor in attempt to achieve costs savings for the State. No increase in price above the amount bid will be permitted.

### **3.3 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.

### **3.4 Bills for Travel**

Bills for travel are not permitted under this Contract.

### **3.5 Payments**

Payment shall be made pursuant to Chapter 215, Florida Statutes. The Contractor shall perform semi-annual and annual chiller inspection services at the facilities identified in ATTACHMENT C – FACILITY LIST AND SITE VISITS for the (insert regions applicable). The Contractor shall be paid equal payments twice per year, one (1) payment for the semi-annual inspection and one (1) payment for the annual inspection. The total annual value of the two (2) payments equal the yearly Contract amount. The semi-annual and annual payments shall be directly related to the work performed and submitted in the Contractor's invoice, with supporting documentation and including the required reports. The Contract Manager shall review, approve (i.e., the services identified in the invoice are verified by the Contract Manager as being satisfactorily performed by the Contractor), and submit said invoice for payment. The Contract Manager shall work with the Contractor to clarify any discrepancies that may exist prior to payment. Under no circumstances will the annual total of the semi-annual and annual invoices exceed the yearly Contract amount.

The Department reserves the right to verify the discount percentage on parts used by the Contractor to complete repairs to ensure compliance with pricing listed in ATTACHMENT D – PRICE SHEETS.

### **3.6 Performance Standards**

Failure on the part of the Contractor to perform services listed in Section 2 of ATTACHMENT A – STATEMENT OF WORK may result in a reduction in the invoice amounts based on the performance penalties as described in Section 4 of ATTACHMENT A – STATEMENT OF WORK.

### **3.7 Final Invoice**

Unless the Contract is renewed or extended, the deliverables in ATTACHMENT A – STATEMENT OF WORK must be completed by June 30, 2024. The final invoice shall be due no later than sixty (60) days after the expiration or termination of this Contract.

### **3.8 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 DOCUMENTS**

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):

- This Contract document (ATTACHMENT B);
- ATTACHMENT A – STATEMENT OF WORK;
- ATTACHMENT C – FACILITY LIST AND SITE VISITS;
- ATTACHMENT D – PRICE SHEETS;
- ITB No.: DMS-18/19-005, and all addenda in reverse order of issuance; and
- The General Contract Conditions - PUR 1000 form, which is incorporated by reference, and available at:  
[https://www.dms.myflorida.com/content/download/2933/11777/PUR\\_1000\\_General\\_Contract\\_Conditions.pdf](https://www.dms.myflorida.com/content/download/2933/11777/PUR_1000_General_Contract_Conditions.pdf)

## **SECTION 5. CONTRACT ADMINISTRATION**

### **5.1 Department Contract Administrator**

The Contract Administrator who will be responsible for maintaining this Contract is as follows:

Caitlen Boles, FCCM  
Departmental Purchasing  
Florida Department of Management Services  
4050 Esplanade Way, suite 335.1X  
Tallahassee, FL 32399-0950  
Phone: (850) 410-1423  
Email: [dms.purchasing@dms.myflorida.com](mailto: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 Contract Manager who is primarily responsible for overseeing the Contractor's performance of its duties and obligations pursuant to the terms of this Contract is as follows:

Tauno Kyllonen, Jr., FCCM  
Maintenance and Construction Superintendent

HVAC Section  
Bureau of Operations and Maintenance  
Division of Real Estate Development and Management  
Florida Department of Management Services  
850-488-9260 (office) | 850-519-6642 (cell)  
[Tauno.Kyllonen@dms.myflorida.com](mailto:Tauno.Kyllonen@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:

Contractor Name  
Employee Name  
Contractor's address  
Telephone:  
Email:

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

### **5.4 Diversity Reporting**

The State of Florida is committed to supporting its diverse business industry and population through ensuring participation by minority, women, and veteran 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](mailto: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 Rule 60A, Florida Administrative Code govern the Contract. The Contractor shall comply with section 274A of the Immigration and Nationality Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of any laws, rules, codes, ordinances, or licensing requirements shall be grounds for Contract termination or non-renewal of the Contract.

### **6.2 Notice of Legal Actions**

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

(30) days of the action being filed. Failure to notify the Department of a legal action within thirty (30) days of the action shall be grounds for termination or nonrenewal of the Contract.

### **6.3 Convicted and Discriminatory Vendors**

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

#### **6.3.1 Convicted Vendors**

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

#### **6.3.2 Discriminatory Vendors**

An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

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

#### **6.3.3 Cooperation with the Inspector General**

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

## **SECTION 7. DEPARTMENT OF STATE, CORPORATE STATUS CERTIFICATE**

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 authority if it is a foreign corporation and shall maintain such status through the term 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 the 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 its insurance carrier note the Department as the certificate holder as provided below:

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

## **SECTION 9. PUBLIC RECORDS**

### **9.1 Access to Public Records**

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

### **9.2 Redacted Copies of Confidential Information**

If the Contractor considers any portion of any documents, data or records submitted to the Department to be confidential, 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 is 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**

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

**SECTION 11. E-VERIFY**

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 (5) days of Contract execution.

If the Contractor is not enrolled in DHS E-Verify System, it will do so within five (5) days of notice of Contract award, and provide the Contract Manager a copy of its MOU within five (5) days of Contract execution. The link to E-Verify is provided below.

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

Upon each Contractor or subcontractor new hire, the Contractor shall provide a statement within five (5) days to the Contract Manager identifying the new hire with its E-Verify case number.

**SECTION 12. SCRUTINIZED COMPANY – 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 of the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or 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. The Contractor will ensure that its subcontractors, if any, will comply with this provision.

## **SECTION 16. VENDOR OMBUDSMAN**

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

## **SECTION 17. MONITORING BY THE DEPARTMENT**

The Contractor shall permit all persons who are duly authorized by the Department to inspect and copy any records, papers, documents, facilities, goods and services of the Contractor that are relevant to this Contract and to interview clients and employees 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 or contracts with 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 WARRANT 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, referred to in this Section 19 as "Person" or "Persons," operating under its direction who directly perform services under the Contract, whether or not the Person has access to State of Florida Data, as well as those who have access, including indirect access, to State of Florida Data, whether or not they perform services under the Contract. The Contractor warrants that all Persons will have passed the background screening described herein before they have Access to Data or begin performing services under the Contract. The look-back period for such background screenings shall be for a minimum of six (6) years where six (6) years of historical information is available.

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

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

"Warrant of Security" means a written document signed by the Contractor and submitted to the Contract Manager in which the Contractor includes:

The name of each individual or Person subject to a criminal background screening under the Contract, and the date of their most recent criminal background screening; and a statement confirming that the criminal background screening did not identify a disqualifying offense; or that

Notwithstanding the identification of a disqualifying offense, the individual was permitted to become a Person performing services under this Contract, that Person's suspension was waived, as supported by an analysis solely using only the factors in 19.1.1.

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

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 that make such data available).

The Contractor agrees that each Person will be screened as a prior condition for performing services or having access to State of Florida Data. The Contractor is responsible for any and all costs and expenses in obtaining and maintaining the criminal

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

#### **19.1.1 Disqualifying Offenses**

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

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

If the Contractor finds a disqualifying offense for a Person within the last six (6) years from the date of the court's disposition, it may obtain information regarding the incident and determine whether that Person should continue providing services under the Contract or have access to State of Florida Data. The Contractor will consider the following factors only in making the determination: i.) nature and gravity of the offense, ii.) the amount of time that lapsed since the offense, iii.) the rehabilitation efforts of the person, and iv.) relevancy of the offense to the job duties of the Person. If the Contractor determines that the Person should be allowed access to State of Florida Data, then the 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 Warrant of Security to the Department by December 31<sup>st</sup> of each Contract year.

#### **19.1.4 Self-Disclosure**

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

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

#### **19.2 Duty to Provide Secure Data**

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

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

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

Upon becoming aware of an alleged security breach or security incident, the Contractor shall set up a conference call with the Department's Contract Manager. The conference call invitation shall contain a brief description of the nature of the event. When possible, a thirty (30) minute notice shall be given to allow Department personnel to be available for the call. If the designated time is not practical for the Department, an alternate time for the call shall be scheduled. All available information shall be shared on the call. The Contractor shall answer all questions based on the information known at that time and shall answer additional questions as additional information becomes known. The Contractor shall provide the Department with final documentation of the incident including all actions that took place. If the Contractor becomes aware of a security breach or security incident outside of normal business hours, the Contractor shall notify the Department's Contract Manager and in all events, within one (1) business day.

### **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 Record Retention**

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

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

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

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

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

Failure to compile, retain, and disclose the written policy and information as required in this subsection shall be considered a breach of the Contract. The resulting damages to the Department from a breach of this subsection are by their nature impossible to ascertain presently and will be difficult to ascertain in the future. The issues involved in determining such damages will be numerous, complex, and unreasonably burdensome to prove. The parties acknowledge that these financial consequences are liquidated damages, exclusive of any other right to damages, not intended to be a penalty and solely intended to compensate for unknown and unascertainable damages. The Contractor therefore agrees to credit the Department the sum of \$1,000.00 for each breach of this subsection.

#### **19.5 Indemnification**

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

### **SECTION 20. PERFORMANCE BOND**

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.

### **SECTION 22. PREFERRED PRICING AFFIDAVIT**

The 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.

The 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 the 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 the Contractor agrees to offer equivalent pricing terms to the Department and the Department and the 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:

- Conference Report on Senate Bill; Special Categories – Contracted Services.

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