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Rick Scott, Governor

Craig J. Nichols, Agency Secretary

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**ATTACHMENT B - CONTRACT**  
**FOR**  
**INDEPENDENT BENEFIT CONSULTING, ACTUARIAL AND AUDITING SERVICES**  
**DMS-13/14-018**

**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 [INSERT VENDOR NAME] (Contractor).

The Contractor responded to the Department's RFP No. DMS-13/14-018 "INDEPENDENT BENEFIT CONSULTING, ACTUARIAL AND AUDITING SERVICES". The parties enter into this contract in accordance with the terms and conditions of the solicitation.

The parties therefore agree as follows.

### 1. Definitions

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

- a. Actuarial Valuation - A statement setting forth the actuarial liabilities and contribution requirements for a defined benefit pension plan using a set of actuarial assumptions, demographic data and assets; all determined as of a specific date, certified by an Enrolled Actuary.
- b. Confidential Information - Any portion of a Respondent's documents, data or records disclosed relating to its proposal that is clearly marked "Confidential" that the Respondent claims is confidential and not subject to disclosure pursuant to chapter 119, Florida Statutes (F.S.), the Florida Constitution or any other authority.
- c. Contract - The agreement that results from this competitive procurement, if any, between the Department and the vendor identified as providing the most advantageous proposal to the State. (This definition replaces the definition in the PUR 1000.)
- d. Contractor(s) - The Respondent(s) that will be awarded a Contract pursuant to this solicitation.
- e. Department - The State of Florida, Department of Management Services, is referred to in this document as "DMS" or "Department".
- f. Division of Retirement (Retirement) - A division within the Department of Management Services responsible for administration of statewide retirement programs and oversight of local government retirement plans.
- g. Division of State Group Insurance (DSGI) - A division within the Department of Management Services responsible for administration of state employee insurance programs.
- h. Florida Retirement System (FRS) - The statewide retirement system providing retirement, disability and survivor benefit programs for covered employees of participating employers. The FRS is a 401(a), Internal Revenue Code, with two primary plans, a defined benefit program (FRS Pension Plan) and a defined contribution program (FRS Investment Plan).
- i. Proposal - the formal response to an RFP.
- j. Respondent - A vendor who submits a proposal to this RFP.
- k. State - The State of Florida and its agencies.
- ~~k.l.~~ State Data - means the data of a state employee or member of the Florida Retirement System (including, but not limited to, their beneficiaries) involving unique personal information (such as name, address, phone number, email address, social

security number, driver's license number, financial information, date of birth, account number, user name and password) or other personal information in the custody or control of the Contractor in the course of providing services under this Contract, regardless of whether it is a public record or considered confidential under any state or federal law.

m. Subcontractor – any third party, agent, or independent contractor who the Contractor engages to provide or assist in providing the services under this Contract and which has direct or indirect access to State Data. “Subcontractor” also includes any third party, agent or independent contractor hired by a Subcontractor who provides or assists in providing services under this Contractor and has direct or indirect access State Data.

l.m. Vendor(s) – An entity that is capable and in the business of providing a commodity or contractual service similar to those within the solicitation.

## 2. Term

### 2.1. Initial Term

The initial term of the Contract will be for five years. The initial contract term shall begin on or about June 16, 2014, 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 not to exceed 5 years. Any renewal shall be contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds. The Contractor shall not charge any costs for renewing the contract beyond the renewal price incorporated in Section 3.1.

### 2.3 Termination

<<Add language>>

## 3. Payments

### 3.1 Pricing

The Contractor shall adhere to the prices as stated in Attachment C of the RFQ, which is incorporated by reference into the Contract.

### 3.2 Detail of Bills

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.

### 3.3 Bills for Travel

For services under this contract, any expense incurred by the Contractor for travel must be authorized by the Department in advance. Bills for travel expenses, if permitted, must be submitted in accordance section 112.061, Florida Statutes.

### 3.4 Payments

The parties agree that payments under this contract shall be made upon receipt of deliverables.

### **3.5. Final Invoice**

Unless renewed or extended, the criteria in Section 2 of the Scope of Work must be completed by the contract end date.

### **3.6 Appropriations**

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

## **4. Contract Document**

### **4.1 Contract Documents & Hierarchy**

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

- a. This Contract
- b. Attached Statement of Work
- c. The General Contract Conditions - PUR 1000, which are incorporated by reference, and available at:  
<http://www.dms.myflorida.com/content/download/2933/11777/version/6/file/1000.pdf>
- d. Price sheet(s)

## **5. Contract Administration**

### **5.1 Department Contract Administrator**

The Department will name a Contract Administrator during the term of this Contract whose responsibilities will be to maintain this Contract. As of the effective date of the Contract, the Contract Administrator is as follows:

Lori L. Anderson, FCCN, FCCM  
Departmental Purchasing  
Department of Management Services  
4050 Esplanade Way, Suite 335  
Tallahassee, Florida 32399-0950  
Telephone: (850) 488-0510  
E-mail: [lori.anderson@dms.myflorida.com](mailto:lori.anderson@dms.myflorida.com)

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

### **5.2 Contract Manager**

Celeste Pullen  
Florida Department of Management Services  
Division of State Group Insurance:  
D (850) 921-4530  
[Celeste.Pullen@dms.myflorida.com](mailto:Celeste.Pullen@dms.myflorida.com)

Garry Green  
Division of Retirement  
Florida Department of Management Services  
D (850) 414-6349  
[Garry.Green@dms.myflorida.com](mailto:Garry.Green@dms.myflorida.com)

### **5.3 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 State of Florida Mentor Protégé Program connects minority-, women-, and veteran business enterprises with private corporations for business development mentoring. We strongly encourage firms doing business with the State of Florida to consider this initiative. For more information on the Mentor Protégé Program, please contact the Office of Supplier Diversity at (850) 487-0915 or [osdhelp@dms.myflorida.com](mailto:osdhelp@dms.myflorida.com).

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

## **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. For example, Chapter 287, of the Florida Statutes and Rule 60A of the Florida Administrative Code govern the Contract. The Contractor shall comply with section 247A(e) of the Immigration and Nationalization 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 nonrenewal of the Contract.

[The Contractor shall comply with the Health Insurance Portability and Accountability Act of 1996 \(HIPAA\), as amended, and its rules and regulations, including but not limited to the provisions governing the privacy and security of records.](#)

### **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 Public Entity Crime 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 Public Entity Crime**

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 36 months following the date of being placed on the convicted vendor list.

### **6.3.2 Discriminatory Vendors**

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

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

## **7. Liability and Worker's Compensation Insurance**

Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. As specified in PUR 1000, section 4.35 (Insurance Requirements), 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.

The Contractor shall obtain and maintain Commercial General Liability insurance including products and completed operations, for the entire length of the Contract. This insurance will provide coverage for all claims that may arise from the operations completed under this Contract, whether such operations are by the Contractor, the Contractor's Teaming Partners, or other employees. Such insurance shall include a Hold Harmless Agreement in favor of the State of Florida, Department of Management Services and must include the State of Florida as an Additional Named Insured for the entire length of the Contract.

The Contractor shall provide (and maintain for the length of the Contract) a current certificate of insurance to the Department.

For this Contract, the limits of coverage under each policy maintained by the Contractor shall be:

Professional Liability/Errors and Omissions Insurance  
Minimum Limits       \$ 1,000,000 Each Occurrence  
                                  \$10,000,000 Aggregate



Auto Insurance/Worker's Compensation: When required by Florida law, the Contractor shall obtain and maintain during the life of this Contract minimal employer's liability Worker's Compensation Insurance. For all of its employees working in connection with this Contract the amount of coverage shall be:

Minimum Employer's Liability Limits: \$100,000 each accident  
\$500,000 policy limit  
\$100,000 each employee

If, in the sole discretion of the Customer, liability insurance greater than that required herein to insure the project, scope of work, or other "Deliverables" is deemed necessary, the additional required insurance amounts should be detailed in a memorandum of agreement and payment of any additional charges may be negotiated between the Department and Contractor. Within ten (10) calendar days after date of award on certification of contract document, contractor shall provide the Department with a certificate of insurance.

## **8. Public Records**

### **8.1 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 Art. I of the State Constitution and section 119.07(1), Florida Statutes.

### **8.2 Redacted Copies of Confidential Information**

If 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, 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.

### **8.3 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). 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.

#### **8.4 Indemnification**

Contractor shall protect, defend, and indemnify the Department for any and all claims arising from or relating to Contractor's determination that the redacted portions of its response are confidential, proprietary, trade secret, or otherwise not subject to disclosure. If 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.

#### **8.5 Contractor as Agent**

If, under this contract, the Contractor is providing services and is acting on behalf of the Department as provided under section 119.011(2), Florida Statutes, the Contractor, subject to the terms of section 287.058(1)(c), Florida Statutes, and any other applicable legal and equitable remedies, shall:

- a. Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the service.
- b. Provide the public with access to public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- d. Meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the Contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.

### **9. Intellectual Property**

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.

### **10. E-Verify**

Pursuant to State of Florida Executive Order Number 11-116, Contractor is required to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by the Contractor during the Contract term. Also, Contractor shall include in related subcontracts a requirement that subcontractors performing work or providing services pursuant to the Contract utilize the E-Verify system to verify employment of all new employees hired by the subcontractor during the Contract term.

### **11. Scrutinized Company List**

In executing this Contract, Contractor certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, Florida Statutes. Pursuant

to section 287.135(5), Florida Statutes, Contractor agrees the Department may immediately terminate this contract for cause if the Contractor is found to have submitted a false certification or if Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List during the term of the Contract.

## **12. 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 U.S. and will not be transferred outside of the U.S. 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 U.S.

## **13. 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 the Contract. Contractor shall retain all documents related to this Contract in compliance with the rules of the Florida Department of State.

## **14. Gifts**

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

## **15. 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.

## **16. Monitoring by the Department**

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

## **17. Audits**

The Department may conduct or have conducted performance and/or compliance audits of any and all areas of the Contractor and/or Subcontractors as determined by the Department. The

Department may conduct an audit and review all the Contractor's (and Subcontractors') data and records that directly relate to the Contract Services. To the extent necessary to verify the Contractor's fees and claims for payment under the Contract, the Contractor's agreements or contracts with Subcontractors, partners or agents of the Contractor, pertaining to this Contract, may be inspected by the Department upon fifteen (15) days notice, during normal working hours, and in accordance with the Contractor's facility access procedures where facility access is required. Release statements from its subcontractors, partners or agents are not required for the Department or its designee to conduct compliance and performance audits on any of the Contractor's contracts relating to this Contract. The State's Chief Financial Officer and the Office of the Auditor General also have authority to perform audits and inspections.

## **18. Background Screenings**

### **A. Background Screening**

In addition to any background screening required by the Contractor as a condition of employment, the Contractor 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 the Contract whether or not the Person has access to state of Florida Data, as well as those persons who are not performing services under the 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. Under this section, "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 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 shall maintain documentation of the screening in the Person's employment file. 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 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
- Felony theft

If the Contractor 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 the Contract or have access to state of Florida Data. The Contractor shall consider the following factors only in making the determination: i.) the 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.) the relevancy of the offense to the job duties of the Person. During the process of collecting the information and making a decision, the Contractor shall not allow the Person to perform services or have access to state of Florida Data.

### **1. Self-Disclosure**

The Contractor shall ensure that all Persons have a responsibility to self-report to the Contractor within three (3) calendar days a Criminal Finding or an updated court disposition of a Criminal Finding. The Contractor shall notify the Department'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 Contractor 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 Contractor 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.

### **3. Refresh Screening**

The Contractor shall ensure that all background screenings are refreshed every five (5) years from the time initially performed for each Person during the Term of the Contract.

### **4. Monthly Reporting**

The Contractor is required to submit a written report to the Department's Contract Manager within fifteen (15) days from the end of each month listing those Persons who have been screened, those Persons with a Criminal Finding who have been removed from performing services or having access to state of Florida Data, and those Persons with a Criminal Finding that the Contractor has allowed to continue providing services or allowed access to state of Florida Data through the process described in A 1. above. The monthly report by the Contractor shall at a minimum include the name of the Person, the title of the Person's position, a description of the job, and a description and date of the Criminal Finding and, where applicable, an updated status of the court proceeding or ultimate disposition.

### **B. Duty to Provide Secure Data**

The Contractor 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 Contractor

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 Department reserves the right to audit the Contractor's background screening process upon two days prior written notice to the Contractor during the Term of the Contract. The Department shall have the right to inspect the Contractor's working area 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.

### **D. Indemnification**

The Contractor agrees to defend, indemnify and hold harmless the Department, 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 Contractor 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 of time following the breach.

## **18. Information Security**

As to managing information, Contractor shall:

1. Coordinate with and address any and all information relative to information security matters that arise regarding the Contract to the Department's Chief Information Officer, in accordance with the Department's Security Incident Response and Reporting policies and procedures contained in IT 13-105, [http://www.dms.myflorida.com/agency\\_administration/internal\\_dms\\_administrative\\_policies\\_and\\_procedures/information\\_technology](http://www.dms.myflorida.com/agency_administration/internal_dms_administrative_policies_and_procedures/information_technology);
2. Protect State Data, and not make State information available or provide access to State Data outside the scope of this Contract, without prior approval of the Department's Contract Manager;
3. Adhere to the Department's information security policies and procedures contained in IT 12-103 in performance of this Contract;
4. Adhere to applicable sections of Chapter 71A-1, Florida Administrative Code, in performance of this Contract, including but not limited to, 71A-1.001, .002, .005, .006, .007, .009, .011, .012, .014, .015, .016, .017, .018 and .019, Florida Administrative Code.

## **19. SUBCONTRACTING**

The Contractor shall be fully responsible for all work performed under the Contract, including but not limited to planning, managing, implementing, operation, supporting, and warranties if applicable. If the Contractor needs to subcontract for any services the Service Provider shall submit a written request to the Department's Contract Manager. The written request shall include, but is not limited to, the following:

1. The name, address and other information identifying the Subcontractor;

2. A description of the services to be performed by the Subcontractor and why the Service Provider is unable to perform this service;

3. Time of performance of the identified service;

4. A description of how the Contractor plans to monitor the Subcontractor's performance of the identified services;

5. Certification by the Contractor that the Subcontractor has all licenses and has satisfied all legal requirements to provide the Services per the Contract. Also, the Contractor shall certify that the Subcontractor is approved by the Florida Department of State to transact business in the state of Florida;

6. Certification by the Contractor that the Subcontractor has successfully engaged in the identified business for a specified period of time, has successfully completed work comparable in scope and specification to that required by the resultant contract, and is qualified both technically and financially to perform services via a subcontract;

7. A copy of the written subcontract agreements (pursuant to chapter 119, Florida Statutes); and

8. Acknowledgement from the Subcontractor of the Contractor's contractual obligation to the Department and that the Subcontractor agrees to comply with all terms and conditions of the Contract. This includes but not limited to the PUR 1000 General Contract Conditions, Section 35, Insurance Requirements.

All Subcontractors must be approved in writing by the Department's Contract Manager before the Subcontractor is authorized to subcontract.

The Contractor is solely responsible for insuring that the Subcontractor performs as specified in the Contract. The Contractor's use of a Subcontractor not approved by the Department's Contract Manager as provided above shall constitute a breach of Contract. During the term of the Contract, and subject to prior written approval of the Department's Contract Manager (i.e., approval before services are provided by a Subcontractor), Subcontractors may be substituted or added.

## 20. Performance Measures

Performance measures for each project will be specified in the purchase order or in the project approval letter/email.

## 21. Performance Bond

~~Submit a performance bond, signed on or after <<insert date>>, from a surety company or bonding agent authorized to do business in the State of Florida and written on company letterhead, that documents the Respondent's present ability to obtain a performance bond or irrevocable letter of credit in the amount of at least <<insert amount>>.~~

A. Prior to execution of this Contract, Contractor will deliver to the Department's Contract Manager a Performance Bond or Irrevocable Letter of Credit in the amount of \$12 million

dollars. The bond or letter of credit shall be used to guarantee at least satisfactory performance by Contractor throughout the term of the Contract (including renewal years). At any time after Contract execution the Contractor's bond may be reduced, or the requirement removed, for the remainder of the term (including any renewal periods).

**B.** The bond shall be maintained throughout the term of the Contract, issued by a reliable surety company which is licensed to do business in the state of Florida, as determined by the Department, and must include the following conditions:

i. Obligee: The Department shall be named as the beneficiary of the bond. The insurer or bonding company shall pay losses suffered by the state of Florida directly to the Department.

ii. Notice of Attempted Change: The Contractor shall provide Department prior written notice or immediate notice upon knowledge of any attempt to cancel or to make any other material change in the status, coverage or scope of the required bond or of the Contractor's failure to pay bond premiums.

iii. Premiums: The Department shall not be responsible for any premiums or assessments on the bond.

iv. Purpose of Bond: The performance bond is to protect the Department and the State against any loss sustained through failure of the Contractor's performance of the Services in accordance with the Contract. No payments shall be made to the Contractor until the performance bond is in place and approved by the Department in writing.

**C.** Upon execution of the Contract and by contract year start each year following the Effective Date, the Contractor shall provide the Department with a surety bond continuation certificate or other acceptable verification that the bond is valid and has been renewed for an additional year.

**D.** The surety bond provided under this Section shall be used solely to the extent necessary to satisfy the damage claims made by the state of Florida pursuant to the terms of the Contract. In no event shall the surety bond be construed as a penalty bond.

**E.** As an alternative to the surety bond described in this Section, the Contractor may use an irrevocable, letter of credit on an annually renewable basis, which in the reasonable judgment of the Department, provides substantially equivalent protection.

## **22. Specific Appropriation**

216.313: 1<sup>st</sup> year of appropriation must be identified for contracts over \$5 million – will insert once contract is approved.

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

## **23. Indemnification**

The Department is a state agency or political subdivision as defined in section 768.28, Florida Statutes, and agrees to be fully responsible for acts and omissions of their own agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of



sovereign immunity by either party to which sovereign immunity may be applicable. Further, nothing herein shall be construed as consent by a state agency or political subdivision of the state of Florida to be sued by third parties in any matter arising out of this Contract or any other contract.

## **24. EVENTS OF DEFAULT AND TERMINATION**

### **A. Contractor Events of Default**

A breach of a material obligation under this Contract constitutes an "Event of Default" on the part of the Contractor which includes:

1. The Contractor employs an unauthorized alien in the performance of any work required under the Contract.
2. The Contractor discontinues the performance of the services required under the Contract unless such discontinuance is due to an excused event, a suspension by the Department or a Department event of default not timely cured.
3. The Contractor abandons the services.
4. The Contractor becomes insolvent or is declared bankrupt.
5. The Contractor files for reorganization under the bankruptcy code.
6. The Contractor commits any act of bankruptcy or insolvency, either voluntarily or involuntarily.
7. The Contractor fails to promptly pay any and all taxes or assessments imposed by and legally due the State or Federal government except for any taxes formally disputed by the Contractor.
8. The Contractor makes an assignment for the benefit of creditors without the approval of the Department.
9. The Contractor made or has made an intentional material misrepresentation or omission in any materials provided to the Department.
10. The Contractor (or any entity or person for which Contractor is responsible) commits or engages in intentional torts, willful misconduct (including intentional breach of contract), unlawful conduct or gross negligence in relation to the Contract and/or a Statement of Work.
11. The Contractor fails to maintain the performance bond or letter of credit.

12. The Contractor fails to maintain the required insurance.
13. The Department determines that the Surety executing a bond, if applicable, used to secure the Contractor's performance of its obligations hereunder becomes unsatisfactory.
14. The Contractor utilizes a vendor in the performance of the work required by the Contract which has been placed on the Department of Management Services' Convicted Vendors List.
15. The Contractor is suspended, debarred or is removed as an authorized vendor by any State or Federal agency or an officer, employee, or agent of the Contractor providing services under the Contract is convicted of a felony.
16. The Contractor refuses to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by Contractor in performance of the Contract and not otherwise deemed confidential, proprietary or a trade secret.
17. The Contractor refuses to allow auditor access as required by the Contract.
18. The Contractor relocates facilities containing State Data or transmits State Data outside the United States.
19. The Contractor changes Subcontractors in violation of the Contract.

However, an event of default will not occur by Contractor if failure to perform is the result of actions of the Department.

#### **B. Department's Remedies in the Event of Default**

1. Subject to the notice and cure provisions herein and in Rule 60A-1.006 (3), Florida Administrative Code, and subject to the dispute resolution process in this Contract, upon the occurrence of an Event of Default on the part of the Contractor, the Department may pursue any other remedy available under law.
2. However, damages, including but not limited to, liquidated damages, already assessed would be taken into consideration in any dispute resolution activities.
3. If the Department determines, in its reasonable discretion, that an Event of Default has occurred pursuant to this Section, the Department will provide the Contractor with written notice of its determination, as well as a

reasonable description of the Event of Default. In addition, the Department will provide the Contractor with a reasonable period of time (not less than thirty (30) calendar days, or such other time as agreed between the Parties) to cure the Event of Default (the "Cure Period"). If the Contractor fails to cure the Event of Default within the Cure Period, the Department may terminate the Contract, in whole or in part, immediately upon expiration of the Cure Period or at any time thereafter by providing written notice thereof to the Contractor.

At its option, the Department may require the Contractor to submit a corrective action plan to correct or resolve an Event of Default under this Contract. The corrective action plan must provide:

- a. A detailed explanation of the reasons for the cited Event of Default;
- b. An assessment or diagnosis of the cause; and
- c. A specific proposal to cure or resolve the Event of Default.

The corrective action plan must be submitted by the deadline set forth in the request for a corrective action plan. The corrective action plan is subject to approval by the Department, which will not unreasonably be withheld.

### **C. Department's Events of Default**

The Department's failure to perform or delay in performing any of the Department's responsibilities under this Contract (or causing to be performed by the applicable third party) will not constitute grounds for termination of the Contract. Notwithstanding the forgoing, the failure by the Department to timely pay amounts due and owing under the Contract will constitute a failure on the Department to perform. However, the Contractor will be owed amounts allowable pursuant to section 215.422, Florida Statutes.

### **D. Contractor Remedies in the Event of Default**

If, and only if, the Department fails to pay the Contractor when due undisputed charges totaling at least one month charges under the Contract and fails to make such payment within 30 days of receipt of invoice, the Contractor may terminate the Contract as of a date specified in a separate written notice of termination given to the Department. For the avoidance of doubt, this section states the only circumstances in which, and the only grounds on which, the Contractor has the right to terminate the Contract prior to its expiration. Contractor must provide written notice of its intent to terminate no sooner than 60 days from the date the Department failed to make payment as required per this Contract.

The Contractor's termination notice will not be effective unless it references this Contract Subsection and expressly states that the Contractor intends to pursue termination of the Contract if the Department's failure to pay undisputed amounts due and owing is not cured within the agreed upon cure period.

The exclusive remedy available to Contractor if the Department fails to make payment as specified in the Contract will be to terminate the Contract.

#### **E. Termination for Convenience**

The Department shall have the right to terminate this Contract in the Department's sole discretion, without any cause or reason, upon giving ninety (90) days written notice to the Contractor of termination, specifying the Termination Date.

#### **F. Termination by Mutual Consent**

Contractor and the Department may terminate this Contract at any time by mutual consent in writing. Any claim of liability asserted against the State or the Department is subject to the limitations of section 768.28, Florida Statutes. This Section survives termination of this Contract.

#### **G. Rights Cumulative, No Waiver**

The rights and remedies provided and available to the Department and the Contractor in this Section are distinct, separate and cumulative remedies, and no one of them, whether or not exercised by a party, shall be deemed to be in exclusion of any other. The election of one remedy shall not be construed as a waiver of any other remedy. Neither party waives its right to pursue all legal remedies or other remedies available under this Contract, at law or in equity.

No covenant, condition, duty, obligation, or undertaking contained in or made a part of the Contract may be waived except by the written agreement of the parties; and a forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply.

## **24.25. Disputes**

Any dispute concerning performance of the terms of this Contract shall be resolved informally by the Contract Managers. During the course of dispute discussion, all reasonable requests made by one party to the other for non-privileged information reasonably related to the matters in dispute will be honored promptly.

If the parties are unable to resolve any disputes at the contract manager level, any dispute concerning performance of the Contract shall be decided by the Department's Secretary or

designee, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, the Contractor files with the Department a petition for administrative hearing. The Department's decision on the petition shall be final, subject to the Contractor's right to administrative review pursuant to Chapter 120, Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative procedures outlined in Chapter 120, Florida Statutes.

Without limiting the foregoing, either party may seek judicial review; and the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, the parties waive any right to jury trial and the Contract, including its formation, performance, enforcement and termination, and all aspects of the parties' relationship under the Contract, together with all related claims (whether sounding in contract, tort or otherwise), will be governed, construed and enforced in all respects in accordance with the Laws of the state of Florida excluding Florida's conflict of law principles.

~~Complaints against Contractor by other Contractors and complaints by Contractor against other Contractors shall be reported to and be resolved by the Department or its designee. Upon receipt of such complaints, the Department shall conduct such investigation as it deems necessary and shall notify the parties of its findings and proposed resolution.~~

## **25-26. Review and Modification**

Upon request of either party, both parties will review this Contract in order to determine whether its terms and conditions are still appropriate. The parties agree to renegotiate terms and conditions hereof if it is mutually determined that significant changes in this Contract are necessary. There are no obligations to agree by either party.

Modifications to the provisions of this Contract, with the exception of Section 5.1 or 5.2, shall be valid only through execution of a formal written amendment to the Contract.

## **26-27. Authorized Signatory**

The Parties agree that only authorized signatories may execute Amendments to this Contract. The Department's authorized signatory is the Secretary or designee. The Contractor's authorized signatory is the \_\_\_\_\_ or designee.

## **27-28. Counterpart Signatures**

This Contract may be executed in several counterparts, each of which shall be an original and all of which taken together constitute a single Contract between the Parties.

SO AGREED:

**STATE OF FLORIDA**

**DEPARTMENT OF MANAGEMENT SERVICES**

\_\_\_\_\_  
By: \_\_\_\_\_ Date: \_\_\_\_\_  
TITLE:

**CONTRACTOR**

\_\_\_\_\_  
By: \_\_\_\_\_ Date: \_\_\_\_\_  
TITLE: