

LEE COUNTY PORT AUTHORITY
Supplemental Terms & Conditions

P 24-36NJD: Technology Solutions, Products, and Services

Lee County Port Authority (Authority) desires to obtain technology solutions, products, and services from Provider as set forth in Exhibit A for Southwest Florida International Airport and/or Page Field Airport ("Airports") in Fort Myers, Florida in accordance with the agreement between Provider and State of Florida, Department of Management Services ("Source Contractor") which was made pursuant to Alternate Contract Source No. 43210000-23-OMNIA-ACS-TX, ("Source Agreement"). In accordance with the source agreement, a participating addendum is allowed in order to incorporate Authority terms to ensure compliance with Authority requirements, Florida law, airport security requirements and federal grantor requirements. The following supplemental terms and conditions will apply.

1.0 ORDER OF PRECEDENCE - If there are any conflicts between this Supplemental Terms & Conditions and the terms of the Source Agreement, this Supplemental Terms & Conditions will control.

2.0 TERM - Purchases may be made from the date of approval by the Board of Port Commissioners and will continue for the duration of the Source Agreement, including renewals or extensions thereof.

3.0 COMPENSATION AND PAYMENTS

3.1 Compensation Schedule: Authority will pay for all authorized items or services in accordance with the terms of the Source Agreement based on the pricing in Exhibit B. The Authority will issue payment to Provider within forty-five (45) calendar days of an invoice that is in acceptable form and containing itemized and detailed description of charges.

3.2 Project-Based Payments: Provider will submit invoices to the Authority in accordance with an approved Task Authorization. Services performed, but not authorized by the Authority, will not be approved for payment. Provider's invoice(s) must correspond to the deliverables set forth in the approved Task Authorization. Invoices will include a description of the project, the amount of time expended, and a description of the services and products provided. Provider's failure to follow these instructions may result in an unavoidable delay of payment by the Authority; however, such delay in payment will not be considered a violation of the Authority's obligations under the Agreement. The Authority will issue payment to Provider within forty-five (45) calendar days of an invoice that is in acceptable form and containing itemized and detailed description of charges.

4.0 LICENSING, MAINTENANCE, AND SUPPORT - In accordance with the Source Agreement, Authority will secure software licenses and associated maintenance and support for the duration for the Source Agreement, including renewals or extensions thereof, in accordance with the pricing set forth in Exhibit B. Provider may offer discounted pricing to Authority in amounts greater than the minimum discounts set forth herein.

5.0 PROJECT-BASED SERVICES - Provider may be requested by the Authority to provide a task estimate which details all labor, materials, time and fees based on the Compensation Schedule, to perform project-based services. The task estimate will be reviewed by the Authority and if acceptable, a Task Authorization will be authorized. The Task Authorization will describe the scope of the work to be performed, establish a schedule for completing each task, and specify the fixed fee hourly rates to include in the not to exceed total amount of compensation for the Task Authorization, as shown in Exhibit C. A sample Task Authorization Amendment is set forth in Exhibit D.

6.0 NOTICES - Notices will be in writing to the following addresses of record:

If to the Authority:
LEE COUNTY PORT AUTHORITY
11000 Terminal Access Road, Suite 8671
Fort Myers, FL 33913
Attention: Airport Executive Director

If to the Provider:
THUNDERCAT TECHNOLOGY, LLC
1925 Isaac Newton Square East, Suite 180
Reston, VA 20190
Attention: Director - State, Local, and Education

7.0 PROVIDER'S PUBLIC RECORDS OBLIGATIONS - Provider must comply with section 119.0701, Florida Statutes, with regard to public records, as stated in Source Agreement.

IF PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES TO ITS DUTY TO PROVIDE PUBLIC RECORDS, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-590-4504, 11000 TERMINAL ACCESS RD., STE 8671, FT. MYERS, FLORIDA 33913, publicrecords@flylcpa.com; <https://www.flylcpa.com/publicrecordsrequests/>

Provider acknowledges that some information concerning its services may be exempt from disclosure under the Florida Public Records Law as follows:

- 1) Airport Security Plans, and other critical operational materials designated by the Authority, are exempt from disclosure as public records under section 331.22, Florida Statutes. These materials include, but are not limited to, any photograph, map, blueprint, drawing, or similar material that depicts critical airport operating facilities or other information that the Authority determines could jeopardize airport security if generally known.
- 2) Building Plans - Section 119.071(3)(b)1, Florida Statutes, exempts building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building or other structure owned or operated by the Authority from the disclosure requirements of the law.
- 3) Airport Security and Fire Safety Systems - Section 281.301, Florida Statutes, exempts information relating to the security or fire safety systems for any property owned by or leased to the Authority and any information relating to the security or fire safety systems.

Provider agrees not to make available to any third party without Authority's written consent, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed or ordered by a court of competent jurisdiction, any confidential or exempt information concerning services to be rendered. Provider will require all of its employees, agents, subcontractors to comply with the provisions of this Article.

8.0 DATA SECURITY - Provider will maintain the security of Authority data including, but not limited to, maintaining a secure area around any displayed visible data and ensuring data is stored and secured when not in use. Provider and subcontractors will not perform any of the services from outside of the United States, and Provider will not allow any Authority data to be sent by any medium, transmitted, or accessed outside the United States due to Provider's action or inaction. In the event of a security breach involving Authority data, Provider will give notice to Authority within one (1) business day. "Security Breach" for purposes of this section will refer to a confirmed event that compromises the confidentiality, integrity, or availability of data. Once a data breach has been contained, Provider must provide Authority with a post-incident report documenting all containment, eradication, and recovery measures taken. Authority reserves the right in its sole discretion to enlist a third party to audit Provider's findings and produce an independent report, and Provider will fully cooperate with the third party. Provider will also comply with all HIPAA requirements and any other local, state, and federal rules and regulations regarding security of information.

9.0 CIVIL RIGHTS PROVISIONS - In all its activities within the scope of its airport program, Provider agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Non Discrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964. The above provision binds the Provider and subcontractors through the term of the Agreement.

10.0 TITLE VI LIST OF PERTINENT NON DISCRIMINATION ACTS AND AUTHORITIES - Provider, for itself, its assignees, and successors in interest agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of

limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

11.0 NONDISCRIMINATION REQUIREMENTS/TITLE VI CLAUSES FOR COMPLIANCE- Provider, for itself, its assignees, and successors in interest, agrees as follows:

- Compliance with Regulations:** Provider (hereinafter includes consultants) will comply with the Title VI List of Pertinent Non Discrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this participating addendum.
- Nondiscrimination:** Provider, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Provider will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Provider for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Provider of its obligations hereunder and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- Information and Reports:** Provider will supply all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required is in the exclusive possession of another who fails or refuses to furnish the information, the Provider will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- Sanctions for Noncompliance:** In the event of a Provider's non-compliance with the non-discrimination provisions of this contract, Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - Withholding payments to the Provider under the contract until the Provider complies; and/or
 - Canceling, terminating, or suspending a contract, in whole or in part.
- Incorporation of Provisions:** Provider will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Provider will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided that if the Provider becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Provider may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Provider may request the United

States to enter into the litigation to protect the interests of the United States.

12.0 GOVERNING LAW AND VENUE - These Supplemental Terms and Conditions will be interpreted, construed and governed by the laws of the state of Florida. Venue for any suit or action will be in Lee County Circuit Court in Lee County, Florida. The right to remove a suit or action to federal court is waived. Each party will bear their own attorney fees.

13.0 INSURANCE - Provider is required to produce a certificate of insurance (COI) that meets all requirements as set forth in Exhibit E. Provider agrees to provide Authority's Risk Manager with a COI indicating all policies are endorsed to provide advance written notice of cancellation, intent not to renew, material change, or reduction in policy coverages except in the Aggregate Limits provision of any policy. In the event of a reduction in the Aggregate Limit, Provider will immediately have the Aggregate Limit reinstated to the full extent permitted. If canceled, Provider will obtain replacement coverage immediately. All insurance will be from responsible companies duly authorized to do business, provide coverage, and honor claims in the state of Florida.

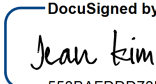
All insurance must be placed with insurers with an A.M. Best Rating of not less than A-VII. Acceptance by the Authority of any COI with the coverages and limits required does not constitute approval that the insurance policies shown in the COI comply with Authority requirements. All coverages will be primary and noncontributory to any insurance or self-insurance program carried by the Authority and will include a waiver of subrogation in favor of the Authority.

14.0 INDEMNIFICATION - Provider agrees to be liable for, and will indemnify, defend and hold harmless Lee County and Authority and their respective commissioners, officers, employees and agents, from and against any and all claims, liabilities, suits, judgments for damages, losses and expenses, including but not limited to court costs, expert witness and professional consultation services, and reasonable attorneys' fees arising out of or resulting from Provider's services or provision of products under this Agreement, or Provider's errors, omissions, negligence, recklessness, or the intentional misconduct of Provider or any agent, employee or other person employed or used by Provider in performance of services under this Agreement, regardless of whether or not caused by a party indemnified hereunder.

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This Supplemental Terms & Conditions is presented by Lee County Port Authority, a political subdivision and special district of the state of Florida at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913, and accepted by ThunderCat Technology, LLC, a Virginia corporation, authorized to do business in the state of Florida, at 1925 Isaac Newton Square East, Suite 180, Reston, Virginia, 20190, Federal Identification Number 26-1638572. Acceptance of this Participating Addendum is indicated by the signature of Provider's authorized representative which affirms Provider is an organization in good standing in its state and authorized to do business in the state of Florida.

THUNDERCAT TECHNOLOGY, LLC

DocuSigned by:

By: 553BAFDD73F4E5
Jean Kim

Title: Contracts Administrator

ATTEST: KEVIN KARNES
Lee County Clerk of the Circuit Court

By: _____
Deputy Clerk

**BOARD OF PORT COMMISSIONERS
LEE COUNTY, FLORIDA**

By: _____

Approved as to Form for the Reliance
of Lee County Port Authority Only

By: _____
Lee County Port Attorney's Office

**EXHIBIT A
SOURCE AGREEMENT**

**Alternate Contract Source (ACS)
No. 43210000-23-OMNIA-ACS-TX
For
Technology Solutions, Products and Services**

This Alternate Contract Source No. 43210000-23-OMNIA-ACS-TX (Contract), is between the Department of Management Services (Department), an agency of the State of Florida (State), located at 4050 Esplanade Way, Tallahassee, FL 32399 and ThunderCat Technology, LLC (Contractor), located at 1925 Isaac Newton Sq. E Suite 180, Reston, VA 20190-5030, collectively referred to herein as the “Parties.”

WHEREAS, the Department is authorized by section 287.042(16), Florida Statutes:

To evaluate contracts let by the Federal Government, another state, or a political subdivision for the provision of commodities and contract services, and, if it is determined by the Secretary of the Department of Management Services in writing to be cost-effective and the best value to the state, to enter into a written agreement authorizing an agency to make purchases under such contract;

WHEREAS, the Region 4 Education Service Center of Texas, competitively procured Technology Solutions, Products, and Services, and executed R210406, Technology Solutions, Products and Services (Master Contract), with the Contractor; and

WHEREAS, the Secretary evaluated the Master Contract and determined that use of the Master Contract is cost-effective and the best value to the state.

NOW THEREFORE, in consideration of the mutual promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Term and Effective Date.

The Master Contract became effective June 1, 2021, and its term currently ends on May 31, 2024. The Master Contract has 2 years of renewals available. The Contract will become effective on June 1, 2023, or on the date signed by all Parties, whichever is later. The Contract will expire on May 31, 2024, unless terminated earlier or renewed in accordance with Exhibit A, Additional Special Contract Conditions.

2. Order of Precedence.

This Contract document and the attached exhibits constitute the Contract and the entire understanding of the Parties. Exhibits A, B, C, D, and this Contract document constitute the Participating Addendum to the Master Contract and modify or supplement the terms

**Alternate Contract Source (ACS)
No. 43210000-23-OMNIA-ACS-TX
For
Technology Solutions, Products and Services**

and conditions of the Master Contract. All exhibits listed below are incorporated by reference into, and form part of, this Contract. In the event of a conflict, the following order of precedence shall apply:

- a) This Contract document
- b) Exhibit A: Additional Special Contract Conditions
- c) Exhibit B: Special Contract Conditions
- d) Exhibit C: Price Sheet
- e) Exhibit D: Master Contract (including any amendments made prior to the effective date of this Contract and any subsequent amendments added to this Contract in accordance with the Modifications Section listed below)

Where the laws and regulations of a state other than the State of Florida are cited or referenced in the Master Contract, such citation or reference shall be replaced by the comparable Florida law or regulation.

3. Purchases off this Contract.

Upon execution of this Contract, agencies, as defined in section 287.012, Florida Statutes, may purchase products and services under this Contract. Any entity making a purchase off of this Contract acknowledges and agrees to be bound by the terms and conditions of this Contract. The Contractor shall adhere to the terms included in any contract or purchase orders issued pursuant to this Contract.

4. Primary Contacts.

Department's Contract Manager:

Jamie Davis
Division of State Purchasing
Florida Department of Management Services
4050 Esplanade Way, Suite 360
Tallahassee, Florida 32399-0950
Telephone: (850) 922-1214
Email: Jamie.davis@dms.fl.gov

Contractor's Contract Manager:

Matt East
ThunderCat Technology
1925 Isaac Newton Square E
Reston, VA 20190
(703) 402-9929
meast@thundercattech.com


**Alternate Contract Source (ACS)
No. 43210000-23-OMNIA-ACS-TX
For
Technology Solutions, Products and Services**

5. Modifications.

Any amendments to this Contract must be in writing and signed by the Parties. If amendments are made to the Master Contract after the effective date of this Contract, the Contractor shall: 1) notify the Department of such amendments; and 2) provided the Department is amenable to incorporating the amendments into this Contract, enter into a written amendment with the Department reflecting the addition of such amendments to this Contract.

IN WITNESS THEREOF, the Parties hereto have caused this Contract to be executed by their duly authorized undersigned officials.

THUNDERCAT TECHNOLOGY, LLC

DocuSigned by:

553BAFDD73F4E5...

Jean Kim Contracts

6/1/2023 | 9:23 AM EDT

Date:

DEPARTMENT OF MANAGEMENT SERVICES

DocuSigned by:

5E91A9D369EB47C...

Pedro Allende, Secretary

6/7/2023 | 9:45 PM EDT

Date:



Exhibit A ADDITIONAL SPECIAL CONTRACT CONDITIONS

The Contractor and agencies, as defined in section 287.012, Florida Statutes acknowledge and agree to be bound by the terms and conditions of the Master Contract except as otherwise specified in the Contract, which includes the Special Contract Conditions and these Additional Special Contract Conditions.

- A. Orders: Contractor must be able to accept the State of Florida Purchasing Card and MyFloridaMarketPlace (MFMP) purchase orders.
- B. Contractor and Subcontractors, Affiliates, Partners, Resellers, Distributors, and Dealers: By execution of a Contract, the Contractor acknowledges that it will not be released of its contractual obligations to the Department or state agencies because of any failure of an affiliate, partner, subcontractor, reseller, distributor, or dealer. The Contractor is responsible for ensuring that its affiliates, partners, subcontractors, resellers, distributors, and dealers providing commodities and performing services in furtherance of the Contract do so in compliance with the terms and conditions of the Contract. The Contractor is fully responsible for satisfactory completion of all work performed under the Contract.
- C. Preferred Pricing: It is the responsibility of the Contractor to provide a completed Preferred Pricing Affidavit upon Contract execution and annually thereafter throughout the Contract term in accordance with the Special Contract Conditions.
- D. Purchases Prerequisites: Contractor must ensure that entities receiving payment directly from Customers under this Contract must have met the following requirements:
 - Have an active registration with the Florida Department of State, Division of Corporations (www.sunbiz.org), or, if exempt from the registration requirements, provide the Department with the basis for such exemption.
 - Be registered in the MFMP Vendor Information Portal (<https://vendor.myfloridamarketplace.com>).
 - Have a current W-9 filed with the Florida Department of Financial Services (<https://flvendor.myfloridacfo.com>)
- E. Punchout Catalog and Electronic Invoicing.
The Contractor is encouraged to provide a MFMP punchout catalog. The punchout catalog provides an alternative mechanism for suppliers to offer the State access to Products awarded under the Contract. The punchout catalog also allows for direct communication between the MFMP eProcurement System and a supplier's Enterprise Resource Planning (ERP) system, which can reflect real-time Product inventory/availability information.

Through utilization of the punchout catalog model, a Florida buyer will "punch out" to a supplier's website. Using the search tools on the supplier's Florida punchout catalog site,

the user selects the desired Products. When complete, the user exits the supplier's punchout catalog site and the shopping cart (full of Products) is "brought back" to MFMP. No orders are sent to a supplier when the user exits the supplier's punchout catalog site. Instead, the chosen Products are "brought back" to MFMP as line items in a purchase order. The user can then proceed through the normal workflow steps, which may include adding/editing the Products (i.e., line items) in the purchase order. An order is not submitted to a supplier until the user approves and submits the purchase order, at which point the supplier receives an email with the order details.

The Contractor may supply electronic invoices in lieu of paper-based invoices for those transactions processed through MFMP. Electronic invoices may be submitted to the agency through one of the mechanisms as listed below:

- 1) EDI (Electronic Data Interchange)
This standard establishes the data contents of the Invoice Transaction Set (810) for use within the context of an Electronic Data Interchange (EDI) environment. This transaction set can be used for invoicing via the Ariba Network (AN) for catalog and non-catalog goods and services.
- 2) PO Flip via AN
This online process allows Contractors to submit invoices via the AN for catalog and non-catalog goods and services. Contractors have the ability to create an invoice directly from their inbox in their AN account by simply "flipping" the PO into an invoice. This option does not require any special software or technical capabilities.

The Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider of MFMP, a State contractor, the right and license to use, reproduce, transmit, distribute, and publicly display within MFMP. In addition, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider the right and license to reproduce and display within MFMP the Contractor's trademarks, system marks, logos, trade dress, or other branding designation that identifies the products made available by the Contractor under the Contract.

- F. Contract Reporting: The Contractor shall provide the Department the following accurate and complete reports associated with this Contract.

- 1) Contract Quarterly Sales Reports. The Contractor shall submit complete Quarterly Sales Reports to the Department's Contract Manager within 30 calendar days after the close of each State fiscal quarter (the State's fiscal quarters close on September 30, December 31, March 31, and June 30).

Reports must be submitted in MS Excel using the DMS Quarterly Sales Report Format, which can be accessed at https://www.dms.myflorida.com/business_operations/purchasing/vendor_resources/quarterly_sales_report_format. Initiation and submission of the most recent version of the Quarterly Sales Report posted on the DMS website is the responsibility of the Contractor without prompting or notification from the Department's Contract Manager. If no orders are received during the quarter, the Contractor must email the DMS Contract Manager confirming there was no activity.

- 2) Certified and Minority Business Enterprises Reports. Upon Customer request, the Contractor shall report to each Customer spend with certified and other minority business enterprises in the provision of commodities or services related to the Customer orders. These reports shall include the period covered; the name, minority code, and Federal Employer Identification Number of each minority business enterprise utilized during the period; commodities and services provided by the minority business enterprise; and the amount paid to each minority business enterprise on behalf of the Customer.
 - 3) Ad Hoc Sales Reports. The Department may require additional Contract sales information such as copies of purchase orders or ad hoc sales reports. The Contractor shall submit these documents and reports in the format acceptable to the Department and within the timeframe specified by the Department.
 - 4) MFMP Transaction Fee Reports. The Contractor shall submit complete monthly MFMP Transaction Fee Reports to the Department. Reports are due 15 calendar days after the end of each month. Information on how to submit MFMP Transaction Fee Reports online can be located at https://www.dms.myflorida.com/business_operations/state_myfloridamarketplace/mfmp_vendors/transaction_fee_and_reporting. Assistance with transaction fee reporting is also available by email at feeprocessing@myfloridamarketplace.com or telephone at 866-FLA-EPRO (866-352-3776) from 8:00 a.m. to 6:00 p.m. Eastern Time.
- G. Financial Consequences: The Department reserves the right to impose financial consequences when the Contractor fails to comply with the requirements of the Contract. The following financial consequences will apply for the Contractor's non-performance under the Contract. The Customer and the Contractor may agree to add additional Financial Consequences on an as-needed basis beyond those stated herein to apply to that Customer's resultant contract or purchase order. The State of Florida reserves the right to withhold payment or implement other appropriate remedies, such as Contract termination or nonrenewal, when the Contractor has failed to comply with the provisions of the Contract. The Contractor and the Department agree that financial consequences for non-performance are an estimate of damages which are difficult to ascertain and are not penalties.

The financial consequences below will be paid and received by the Department of Management Services within 30 calendar days from the due date specified by the Department. These financial consequences below are individually assessed for failures over each target period beginning with the first full month or quarter of the Contract performance and every month or quarter, respectively, thereafter.

Financial Consequences Chart

Deliverable	Performance Metric	Performance Due Date	Financial Consequence for Non-Performance /Not Received by the Contract Manager
Contractor will timely submit complete Quarterly Sales Reports	All Quarterly Sales Reports will be submitted timely with the required information	Completed reports are due on or before the 30 th calendar day after the close of each State fiscal quarter	\$250 per day late
Contractor will timely submit complete MFMP Transaction Fee Reports	All MFMP Transaction Fee Reports will be submitted timely with the required information	Completed reports are due on or before the 15 th calendar day after the end of each month	\$100 per day late

No favorable action will be considered when Contractor has outstanding Contract Quarterly Sales Reports, MFMP Transaction Fee Reports, or any other documentation owed to the Department or Customer, to include fees / monies, that is required under this Contract.

- H. Business Review Meetings: Both the Department and Customer reserve the right to schedule business review meetings. The Department or Customer may specify the format or agenda for the meeting. At a minimum, the Business Review Meeting may include the following topics:
- a. Contract compliance
 - b. Contract savings (in dollar amount and cost avoidance)
 - c. Spend reports by Customer
 - d. Recommendations for improved compliance and performance
- I. Special Contract Conditions revisions: the corresponding subsections of the Special Contract Conditions referenced below are replaced in their entirety with the following:

2.2 Renewal.

Upon written agreement, the Department and the Contractor may renew the Contract in whole or in part only as set forth in the Contract documents, and in accordance with section 287.057(14), F.S.

3.7 Transaction Fees.

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to Section 287.057(24), F.S., all payments shall be assessed a Transaction Fee of one percent (1.0%), or as may otherwise be established by law, which the vendor shall pay to the State.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the vendor. If automatic deduction is not possible, the vendor shall pay the Transaction Fee pursuant to subsection 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, vendor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

The vendor shall receive a credit for any Transaction Fee paid by the vendor for the purchase of any item(s) if such item(s) are returned to the vendor through no fault, act, or omission of the vendor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the vendor's failure to perform or comply with specifications or requirements of the agreement.

Vendors will submit any monthly reports required pursuant to the rule. All such reports and payments will be subject to audit. Failure to comply with the payment of the Transaction Fees or submission of required reporting of transactions shall constitute grounds for declaring the Vendor in default.

5.1 Conduct of Business.

The Contractor must 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, the Contractor must comply with section 274A of the Immigration and Nationality Act, the Americans with Disabilities Act, Health Insurance Portability and Accountability Act, if applicable, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. The provisions of subparagraphs 287.058(1)(a)-(c) and (g), F.S., are hereby incorporated by reference.

Nothing contained within this Contract shall be construed to prohibit the Contractor from disclosing information relevant to performance of the Contract or purchase order to members or staff of the Florida Senate or Florida House of Representatives.

Pursuant to section 287.057(26), F.S., the Contractor shall answer all questions of, and ensure a representative will be available to, a continuing oversight team.

The Contractor will comply with all applicable disclosure requirements set forth in section 286.101, F.S. In the event the Department of Financial Services issues the Contractor a final order determining a third or subsequent violation pursuant to section 286.101(7)(c), F.S., the Contractor shall immediately notify the Department and applicable Customers and shall be disqualified from Contract eligibility.

5.4 Convicted, Discriminatory, Antitrust Violator, and Suspended Vendor Lists.

In accordance with sections 287.133, 287.134, and 287.137, F.S., the Contractor is hereby informed of the provisions of sections 287.133(2)(a), 287.134(2)(a), and 287.137(2)(a), F.S. For purposes of this Contract, a person or affiliate who is on the Convicted Vendor List, the Discriminatory Vendor List, or the Antitrust Violator Vendor List may not perform work as a contractor, supplier, subcontractor, or consultant under the Contract. The Contractor must notify the Department if it or any of its suppliers, subcontractors, or consultants have been placed on the Convicted Vendor List, the Discriminatory Vendor List, or the Antitrust Violator Vendor List during the term of the Contract.

In accordance with section 287.1351, F.S., a vendor placed on the Suspended Vendor List may not enter into or renew a contract to provide any goods or services to an agency after its placement on the Suspended Vendor List.

A firm or individual placed on the Suspended Vendor List pursuant to section 287.1351, F.S., the Convicted Vendor List pursuant to section 287.133, F.S., the Antitrust Violator Vendor List pursuant to section 287.137, F.S., or the Discriminatory Vendor List pursuant to section 287.134, F.S., is immediately disqualified from Contract eligibility.

5.6 Cooperation with Inspector General and Records Retention.

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

8.1.1 Termination of Contract.

The Department may terminate the Contract for refusal by the Contractor to comply with this section by not allowing access to all public records, as defined in Chapter 119, F.S., made or received by the Contractor in conjunction with the Contract unless the records are exempt from s. 24(a) of Art. I of the State Constitution and section 119.071(1), F.S.

8.1.2 Statutory Notice.

Pursuant to section 119.0701(2)(a), F.S., for contracts for services with a contractor acting on behalf of a public agency, as defined in section 119.011(2), F.S., the following applies:

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 DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS AT PUBLICRECORDS@DMS.FL.GOV, (850) 487-1082 OR 4050 ESPLANADE WAY, SUITE 160, TALLAHASSEE, FLORIDA 32399-0950.

Pursuant to section 119.0701(2)(b), F.S., for contracts for services with a contractor acting on behalf of a public agency as defined in section 119.011(2), F.S., the Contractor shall:

(a) Keep and maintain public records required by the public agency to perform the service.

(b) 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 a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.

(c) 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.

(d) 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.

12.1 Performance or Compliance Audits.

The Department may conduct or have conducted performance and/or compliance audits of the Contractor and subcontractors as determined by the Department. The Department may conduct an audit and review all the Contractor's and subcontractors' data and records that directly relate to the Contract. 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 the Contract, may be inspected by the Department upon fifteen (15) calendar 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 Inspector General, in accordance with section 5.6, the State of Florida's Chief Financial Officer, and the Office of the Auditor General shall also have authority to perform audits and inspections.

13.2 E-Verify.

The Contractor and its subcontractors have an obligation to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees in accordance with section 448.095, F.S. By executing this Contract, the Contractor certifies that it is registered with, and uses, the E-Verify system for all newly hired employees in accordance with section 448.095, F.S. The Contractor must obtain an affidavit from its subcontractors in accordance with paragraph (2)(b) of section 448.095, F.S., and maintain a copy of such affidavit for the duration of the Contract. The Contractor shall provide a copy of its DHS Memorandum of Understanding (MOU) to the Department's Contract Manager within five days of Contract execution.

This section serves as notice to the Contractor regarding the requirements of section 448.095, F.S., specifically sub-paragraph (2)(c)1, and the Department's obligation to terminate the Contract if it has a good faith belief that the Contractor has knowingly violated section 448.09(1), F.S. If terminated for such reason, the Contractor will not be eligible for award of a public contract for at least one year after the date of such termination. The Department will promptly notify the Contractor and order the immediate termination of the contract between the Contractor and a subcontractor performing work on its behalf for this Contract should the Department have a good faith belief that the subcontractor has knowingly violated section 448.09(1), F.S.

J. Special Contract Conditions additions: the following subsection is added to the Special Contract Conditions:

12.3 Document Inspection.

In accordance with section 216.1366, F.S., the Department or a state agency is authorized to inspect the: (a) financial records, papers, and documents of the Contractor that are directly related to the performance of the Contract or the expenditure of state funds; and (b) programmatic records, papers, and documents of the Contractor which the Department or state agency determines are necessary to monitor the performance of the Contract or to ensure that the terms of the Contract are being met. The Contractor shall provide such records, papers, and documents requested by the Department or a state agency within 10 Business Days after the request is made.

**SPECIAL CONTRACT CONDITIONS
JULY 1, 2019 VERSION**

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In accordance with Rule 60A-1.002(7), F.A.C., Form PUR 1000 is included herein by reference but is superseded in its entirety by these Special Contract Conditions.

SECTION 1. DEFINITION.

The following definition applies in addition to the definitions in Chapter 287, Florida Statutes (F.S.), and Rule Chapter 60A-1, Florida Administrative Code (F.A.C.):

1.1 Customer.

The agency or eligible user that purchases commodities or contractual services pursuant to the Contract.

SECTION 2. CONTRACT TERM AND TERMINATION.

2.1 Initial Term.

The initial term will begin on the date set forth in the Contract documents or on the date the Contract is signed by all Parties, whichever is later.

2.2 Renewal.

Upon written agreement, the Department and the Contractor may renew the Contract in whole or in part only as set forth in the Contract documents, and in accordance with section 287.057(13), F.S.

2.3 Suspension of Work and Termination.

2.3.1 Suspension of Work.

The Department may, at its sole discretion, suspend any or all activities under the Contract, at any time, when it is in the best interest of the State of Florida to do so. The Customer may suspend a resulting contract or purchase order, at any time, when in the best interest of the Customer to do so. The Department or Customer will provide the Contractor written notice outlining the particulars of the suspension. After receiving a suspension notice, the Contractor must comply with the notice and will cease the performance of the Contract or purchase order. Suspension of work will not entitle the Contractor to any additional compensation. The Contractor will not resume performance of the Contract or purchase order until so authorized by the Department.

2.3.2 Termination for Convenience.

The Contract may be terminated by the Department in whole or in part at any time, in the best interest of the State of Florida. If the Contract is terminated before performance is completed, the Contractor will be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the Contract price as the amount of work satisfactorily performed. All work in progress will become the property of the Customer and will be turned over promptly by the Contractor.

2.3.3 Termination for Cause.

If the performance of the Contractor is not in compliance with the Contract requirements or the Contractor has defaulted, the Department may:

- (a) immediately terminate the Contract;
- (b) notify the Contractor of the noncompliance or default, require correction, and specify the date by which the correction must be completed before the Contract is terminated; or
- (c) take other action deemed appropriate by the Department.

SECTION 3. PAYMENT AND FEES.

3.1 Pricing.

The Contractor will not exceed the pricing set forth in the Contract documents.

3.2 Price Decreases.

The following price decrease terms will apply to the Contract:

3.2.1 Quantity Discounts. Contractor may offer additional discounts for one-time delivery of large single orders;

3.2.2 Preferred Pricing. The Contractor guarantees that the pricing indicated in this Contract is a maximum price. Additionally, Contractor's pricing will not exceed the pricing offered under comparable contracts. Comparable contracts are those that are similar in size, scope, and terms. In compliance with section 216.0113, F.S., Contractor must annually submit an affidavit from the Contractor's authorized representative attesting that the Contract complies with this clause.

3.2.3 Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, the Contractor may conduct sales promotions involving price reductions for a specified lesser period. The Contractor must submit documentation identifying the proposed: (1) starting and ending dates of the promotion, (2) commodities or contractual services involved, and (3) promotional prices compared to then-authorized prices.

3.3 Payment Invoicing.

The Contractor will be paid upon submission of invoices to the Customer after delivery and acceptance of commodities or contractual services is confirmed by the Customer. Invoices must contain sufficient detail for an audit and contain the Contract Number and the Contractor's Federal Employer Identification Number.

3.4 Purchase Order.

A Customer may use purchase orders to buy commodities or contractual services pursuant to the Contract and, if applicable, the Contractor must provide commodities or contractual services pursuant to purchase orders. Purchase orders issued pursuant to the Contract must be received by the Contractor no later than the close of business on the last day of the Contract's term. The Contractor is required to accept timely purchase orders specifying delivery schedules that extend beyond the Contract term even when such extended delivery will occur after expiration of the Contract. Purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the Contract shall survive the termination or expiration of the Contract and apply to the Contractor's performance. The duration of purchase orders for recurring deliverables shall not exceed the expiration of the Contract by more than twelve months. Any purchase order terms and conditions conflicting with these Special Contract Conditions shall not become a part of the Contract.

3.5 Travel.

Travel expenses are not reimbursable unless specifically authorized by the Customer in writing and may be reimbursed only in accordance with section 112.061, F.S.

3.6 Annual Appropriation.

Pursuant to section 287.0582, F.S., if the Contract binds the State of Florida or an agency for the purchase of services or tangible personal property for a period in excess of one fiscal year, the State of Florida's performance and obligation to pay under the Contract is contingent upon an annual appropriation by the Legislature.

3.7 Transaction Fees.

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to section 287.057(22), F.S. All payments issued by Customers to registered Vendors for purchases of commodities or contractual services will be assessed Transaction Fees as prescribed by rule 60A-1.031, F.A.C., or as may otherwise be established by law. Vendors must pay the Transaction Fees and agree to automatic deduction of the Transaction Fees when automatic deduction becomes available. Vendors will submit any monthly reports required pursuant to the rule. All such reports and payments will be subject to audit. Failure to comply with the payment of the Transaction Fees or reporting of transactions will constitute grounds for declaring the Vendor in default and subject the Vendor to exclusion from business with the State of Florida.

3.8 Taxes.

Taxes, customs, and tariffs on commodities or contractual services purchased under the Contract will not be assessed against the Customer or Department unless authorized by Florida law.

3.9 Return of Funds.

Contractor will return any overpayments due to unearned funds or funds disallowed pursuant to the terms of the Contract that were disbursed to the Contractor. The Contractor must return any overpayment within forty (40) calendar days after either discovery by the Contractor, its independent auditor, or notification by the Department or Customer of the overpayment.

SECTION 4. CONTRACT MANAGEMENT.

4.1 Composition and Priority.

The Contractor agrees to provide commodities or contractual services to the Customer as specified in the Contract. Additionally, the terms of the Contract supersede the terms of all prior agreements between the Parties on this subject matter.

4.2 Notices.

All notices required under the Contract must be delivered to the designated Contract Manager in a manner identified by the Department.

4.3 Department's Contract Manager.

The Department's Contract Manager, who is primarily responsible for the Department's oversight of the Contract, will be identified in a separate writing to the Contractor upon Contract signing in the following format:

Department's Contract Manager Name

Department's Name
Department's Physical Address
Department's Telephone #
Department's Email Address

If the Department changes the Contract Manager, the Department will notify the Contractor. Such a change does not require an amendment to the Contract.

4.4 Contractor's Contract Manager.

The Contractor's Contract Manager, who is primarily responsible for the Contractor's oversight of the Contract performance, will be identified in a separate writing to the Department upon Contract signing in the following format:

Contractor's Contract Manager Name
Contractor's Name
Contractor's Physical Address
Contractor's Telephone #
Contractor's Email Address

If the Contractor changes its Contract Manager, the Contractor will notify the Department. Such a change does not require an amendment to the Contract.

4.5 Diversity.

4.5.1 Office of Supplier Diversity.

The State of Florida supports its diverse business community by creating opportunities for woman-, veteran-, and minority-owned small business enterprises to participate in procurements and contracts. The Department encourages supplier diversity through certification of woman-, veteran-, and minority-owned small business enterprises and provides advocacy, outreach, and networking through regional business events. For additional information, please contact the Office of Supplier Diversity (OSD) at osdinfo@dms.myflorida.com.

4.5.2 Diversity Reporting.

Upon request, the Contractor will report to the Department its spend with business enterprises certified by the OSD. These reports must include the time period covered, the name and Federal Employer Identification Number of each business enterprise utilized during the period, commodities and contractual services provided by the business enterprise, and the amount paid to the business enterprise on behalf of each agency purchasing under the Contract.

4.6 RESPECT.

Subject to the agency determination provided for in section 413.036, F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES THAT ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM A NONPROFIT AGENCY FOR THE BLIND OR FOR THE SEVERELY HANDICAPPED THAT IS QUALIFIED PURSUANT TO CHAPTER 413, FLORIDA STATUTES, IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 413.036(1) AND (2), FLORIDA STATUTES;

AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THE STATE AGENCY INsofar AS DEALINGS WITH SUCH QUALIFIED NONPROFIT AGENCY ARE CONCERNED.

Additional information about RESPECT and the commodities or contractual services it offers is available at <https://www.respectofflorida.org>.

4.7 PRIDE.

Subject to the agency determination provided for in sections 287.042(1) and 946.515, F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES WHICH ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM THE CORPORATION IDENTIFIED UNDER CHAPTER 946, F.S., IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 946.515(2) AND (4), F.S.; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THIS AGENCY INsofar AS DEALINGS WITH SUCH CORPORATION ARE CONCERNED.

Additional information about PRIDE and the commodities or contractual services it offers is available at <https://www.pride-enterprises.org>.

SECTION 5. COMPLIANCE WITH LAWS.

5.1 Conduct of Business.

The Contractor must 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, the Contractor must comply with section 274A of the Immigration and Nationality Act, the Americans with Disabilities Act, Health Insurance Portability and Accountability Act, if applicable, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. The provisions of subparagraphs 287.058(1)(a)-(c), and (g), F.S., are hereby incorporated by reference.

5.2 Dispute Resolution, Governing Law, and Venue.

Any dispute concerning performance of the Contract shall be decided by the Department's designated Contract Manager, who will reduce the decision to writing and serve a copy on the Contractor. The decision of the Contract Manager shall be final and conclusive. Exhaustion of this administrative remedy is an absolute condition precedent to the Contractor's ability to pursue legal action related to the Contract or any other form of dispute resolution. The laws of the State of Florida govern the Contract. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to the Contract. Further, the Contractor hereby waives all privileges and rights relating to venue it may have under Chapter 47, F.S., and all such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to, those based on convenience. The Contractor hereby submits to venue in the county chosen by the Department.

5.3 Department of State Registration.

Consistent with Title XXXVI, F.S., the Contractor and any subcontractors that assert status, other than a sole proprietor, must provide the Department with conclusive evidence of a certificate of status, not subject to qualification, if a Florida business entity, or of a certificate of authorization if a foreign business entity.

5.4 Suspended, Convicted, and Discriminatory Vendor Lists.

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

5.5 Scrutinized Companies - Termination by the Department.

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

5.6 Cooperation with Inspector General and Records Retention.

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

SECTION 6. MISCELLANEOUS.

6.1 Subcontractors.

The Contractor will not subcontract any work under the Contract without prior written consent of the Department. The Contractor is fully responsible for satisfactory completion of all its subcontracted work. The Department supports diversity in its procurements and contracts, and requests that the Contractor offer subcontracting opportunities to certified woman-, veteran-, and minority-owned small businesses. The

Contractor may contact the OSD at osdhelp@dms.myflorida.com for information on certified small business enterprises available for subcontracting opportunities.

6.2 Assignment.

The Contractor will not sell, assign, or transfer any of its rights, duties, or obligations under the Contract without the prior written consent of the Department. However, the Contractor may waive its right to receive payment and assign same upon notice to the Department. In the event of any assignment, the Contractor remains responsible for performance of the Contract, unless such responsibility is expressly waived by the Department. The Department may assign the Contract with prior written notice to the Contractor.

6.3 Independent Contractor.

The Contractor and its employees, agents, representatives, and subcontractors are independent contractors and not employees or agents of the State of Florida and are not entitled to State of Florida benefits. The Department and Customer will not be bound by any acts or conduct of the Contractor or its employees, agents, representatives, or subcontractors. The Contractor agrees to include this provision in all its subcontracts under the Contract.

6.4 Inspection and Acceptance of Commodities.

6.4.1 Risk of Loss.

Matters of inspection and acceptance are addressed in section 215.422, F.S. Until acceptance, risk of loss or damage will remain with the Contractor. The Contractor will be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer will: record any evidence of visible damage on all copies of the delivering carrier's bill of lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's bill of lading and damage inspection report.

6.4.2 Rejected Commodities.

When a Customer rejects a commodity, Contractor will remove the commodity from the premises within ten (10) calendar days after notification of rejection, and the risk of loss will remain with the Contractor. Commodities not removed by the Contractor within ten (10) calendar days will be deemed abandoned by the Contractor, and the Customer will have the right to dispose of such commodities. Contractor will reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected commodities.

6.5 Safety Standards.

Performance of the Contract for all commodities or contractual services must comply with requirements of the Occupational Safety and Health Act and other applicable State of Florida and federal requirements.

6.6 Ombudsman.

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

6.7 Time is of the Essence.

Time is of the essence regarding every obligation of the Contractor under the Contract. Each obligation is deemed material, and a breach of any such obligation (including a breach resulting from untimely performance) is a material breach.

6.8 Waiver.

The delay or failure by the Department or the Customer to exercise or enforce any rights under the Contract will not constitute waiver of such rights.

6.9 Modification and Severability.

The Contract may only be modified by written agreement between the Department and the Contractor. Should a court determine any provision of the Contract is invalid, the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Contract did not contain the provision held invalid.

6.10 Cooperative Purchasing.

Pursuant to their own governing laws, and subject to the agreement of the Contractor, governmental entities that are not Customers may make purchases under the terms and conditions contained herein, if agreed to by Contractor. Such purchases are independent of the Contract between the Department and the Contractor, and the Department is not a party to these transactions. Agencies seeking to make purchases under this Contract are required to follow the requirements of Rule 60A-1.045(5), F.A.C.

SECTION 7. LIABILITY AND INSURANCE.

7.1 Workers' Compensation Insurance.

The Contractor shall maintain workers' compensation insurance as required under the Florida Workers' Compensation Law or the workers' compensation law of another jurisdiction where applicable. The Contractor must require all subcontractors to similarly provide workers' compensation insurance for all of the latter's employees. In the event work is being performed by the Contractor under the Contract and any class of employees performing the work is not protected under Workers' Compensation statutes, the Contractor must provide, and cause each subcontractor to provide, adequate insurance satisfactory to the Department, for the protection of employees not otherwise protected.

7.2 General Liability Insurance.

The Contractor must secure and maintain Commercial General Liability Insurance, including bodily injury, property damage, products, personal and advertising injury, and completed operations. This insurance must provide coverage for all claims that may arise from performance of the Contract or completed operations, whether by the Contractor or anyone directly or indirectly employed by the Contractor. Such insurance must include the State of Florida as an additional insured for the entire length of the resulting contract. The Contractor is responsible for determining the minimum limits of liability necessary to provide reasonable financial protections to the Contractor and the State of Florida under the resulting contract.

7.3 Florida Authorized Insurers.

All insurance shall be with insurers authorized and eligible to transact the applicable line of insurance business in the State of Florida. The Contractor shall provide Certification(s) of Insurance evidencing that all appropriate coverage is in place and showing the Department to be an additional insured.

7.4 Performance Bond.

Unless otherwise prohibited by law, the Department may require the Contractor to furnish, without additional cost to the Department, a performance bond or irrevocable letter of credit or other form of security for the satisfactory performance of work hereunder. The Department shall determine the type and amount of security.

7.5 Indemnification.

To the extent permitted by Florida law, the Contractor agrees to indemnify, defend, and hold the Customer and the State of Florida, its officers, employees, and agents harmless from all fines, claims, assessments, suits, judgments, or damages, including consequential, special, indirect, and punitive damages, including court costs and attorney's fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret, or intellectual property right or out of any acts, actions, breaches, neglect, or omissions of the Contractor, its employees, agents, subcontractors, assignees, or delegates related to the Contract, as well as for any determination arising out of or related to the Contract that the Contractor or Contractor's employees, agents, subcontractors, assignees, or delegates are not independent contractors in relation to the Customer. The Contract does not constitute a waiver of sovereign immunity or consent by the Customer or the State of Florida or its subdivisions to suit by third parties. Without limiting this indemnification, the Customer may provide the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense.

7.6 Limitation of Liability.

Unless otherwise specifically enumerated in the Contract or in the purchase order, neither the Department nor the Customer shall be liable for special, indirect, punitive, or consequential damages, including lost data or records (unless the Contract or purchase order requires the Contractor to back-up data or records), even if the Department or Customer has been advised that such damages are possible. Neither the Department nor the Customer shall be liable for lost profits, lost revenue, or lost institutional operating savings. The Department or Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs, and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

SECTION 8. PUBLIC RECORDS, TRADE SECRETS, DOCUMENT MANAGEMENT, AND INTELLECTUAL PROPERTY.

8.1 Public Records.

8.1.1 Termination of Contract.

The Department may terminate the Contract for refusal by the Contractor to comply with this section by not allowing access to all public records, as defined in Chapter 119, F. S., made or received by the Contractor in conjunction with the Contract.

8.1.2 Statutory Notice.

Pursuant to section 119.0701(2)(a), F.S., for contracts for services with a contractor acting on behalf of a public agency, as defined in section 119.011(2), F.S., the following applies:

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 IN THE RESULTING CONTRACT OR PURCHASE ORDER.

Pursuant to section 119.0701(2)(b), F.S., for contracts for services with a contractor acting on behalf of a public agency as defined in section 119.011(2), F.S., the Contractor shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) 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 a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- (c) 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.
- (d) 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.

8.2 Protection of Trade Secrets or Otherwise Confidential Information.

8.2.1 Contractor Designation of Trade Secrets or Otherwise Confidential Information. If the Contractor considers any portion of materials to be trade secret under section 688.002 or 812.081, F.S., or otherwise confidential under Florida or federal law, the Contractor must clearly designate that portion of the materials as trade secret or otherwise confidential when submitted to the Department. The Contractor will be

responsible for responding to and resolving all claims for access to Contract-related materials it has designated trade secret or otherwise confidential.

8.2.2 Public Records Requests.

If the Department receives a public records request for materials designated by the Contractor as trade secret or otherwise confidential under Florida or federal law, the Contractor will be responsible for taking the appropriate legal action in response to the request. If the Contractor fails to take appropriate and timely action to protect the materials designated as trade secret or otherwise confidential, the Department will provide the materials to the requester.

8.2.3 Indemnification Related to Confidentiality of Materials.

The Contractor will protect, defend, indemnify, and hold harmless the Department for claims, costs, fines, and attorney's fees arising from or relating to its designation of materials as trade secret or otherwise confidential.

8.3 Document Management.

The Contractor must 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. The Contractor must retain all documents related to the Contract for five (5) years after expiration of the Contract or, if longer, the period required by the General Records Schedules maintained by the Florida Department of State available at the Department of State's Records Management website.

8.4 Intellectual Property.

8.4.1 Ownership.

Unless specifically addressed otherwise in the Contract, the State of Florida shall be the owner of all intellectual property rights to all property created or developed in connection with the Contract.

8.4.2 Patentable Inventions or Discoveries.

Any inventions or discoveries developed in the course, or as a result, of services in connection with the Contract that are patentable pursuant to 35 U.S.C. § 101 are the sole property of the State of Florida. Contractor must inform the Customer of any inventions or discoveries developed or made through performance of the Contract, and such inventions or discoveries will be referred to the Florida Department of State for a determination on whether patent protection will be sought. The State of Florida will be the sole owner of all patents resulting from any invention or discovery made through performance of the Contract.

8.4.3 Copyrightable Works.

Contractor must notify the Department or State of Florida of any publications, artwork, or other copyrightable works developed in connection with the Contract. All copyrights created or developed through performance of the Contract are owned solely by the State of Florida.

SECTION 9. DATA SECURITY.

The Contractor will maintain the security of State of Florida data including, but not limited to, maintaining a secure area around any displayed visible data and ensuring data is stored and secured when not in use. The Contractor and subcontractors will not perform any of the services from outside of the United States, and the Contractor will not allow any State of Florida data to be sent by any medium, transmitted, or accessed outside the United States due to Contractor's action or inaction. In the event of a security breach involving State of Florida data, the Contractor shall give notice to the Customer and the Department within one business day. "Security breach" for purposes of this section will refer to a confirmed event that compromises the confidentiality, integrity, or availability of data. Once a data breach has been contained, the Contractor must provide the Department with a post-incident report documenting all containment, eradication, and recovery measures taken. The Department reserves the right in its sole discretion to enlist a third party to audit Contractor's findings and produce an independent report, and the Contractor will fully cooperate with the third party. The Contractor will also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information.

SECTION 10. GRATUITIES, LOBBYING, AND COMMUNICATIONS.

10.1 Gratuities.

The Contractor will not, in connection with this Contract, directly or indirectly (1) offer, give, or agree to give anything of value to anyone as consideration for any State of Florida officer's or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone anything of value for the benefit of, or at the direction or request of, any State of Florida officer or employee.

10.2 Lobbying.

In accordance with sections 11.062 and 216.347, F.S., Contract funds are not to be used for the purpose of lobbying the Legislature, the judicial branch, or the Department. Pursuant to section 287.058(6), F.S., the Contract does not prohibit the Contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the Contract after the Contract is executed and during the Contract term.

10.3 Communications.

10.3.1 Contractor Communication or Disclosure.

The Contractor shall not make any public statements, press releases, publicity releases, or other similar communications concerning the Contract or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with the Contract, without first notifying the Customer's Contract Manager and securing the Customer's prior written consent.

10.3.2 Use of Customer Statements.

The Contractor shall not use any statement attributable to the Customer or its employees for the Contractor's promotions, press releases, publicity releases, marketing, corporate communications, or other similar communications, without first notifying the Customer's Contract Manager and securing the Customer's prior written consent.

SECTION 11. CONTRACT MONITORING.

11.1 Performance Standards.

The Contractor agrees to perform all tasks and provide deliverables as set forth in the Contract. The Department and the Customer will be entitled at all times, upon request, to be advised as to the status of work being done by the Contractor and of the details thereof.

11.2 Performance Deficiencies and Financial Consequences of Non-Performance.

11.2.1 Proposal of Corrective Action Plan.

In addition to the processes set forth in the Contract (e.g., service level agreements), if the Department or Customer determines that there is a performance deficiency that requires correction by the Contractor, then the Department or Customer will notify the Contractor. The correction must be made within a time-frame specified by the Department or Customer. The Contractor must provide the Department or Customer with a corrective action plan describing how the Contractor will address all performance deficiencies identified by the Department or Customer.

11.2.2 Retainage for Unacceptable Corrective Action Plan or Plan Failure.

If the corrective action plan is unacceptable to the Department or Customer, or implementation of the plan fails to remedy the performance deficiencies, the Department or Customer will retain ten percent (10%) of the total invoice amount. The retainage will be withheld until the Contractor resolves the performance deficiencies. If the performance deficiencies are resolved, the Contractor may invoice the Department or Customer for the retained amount. If the Contractor fails to resolve the performance deficiencies, the retained amount will be forfeited to compensate the Department or Customer for the performance deficiencies.

11.3 Performance Delay.

11.3.1 Notification.

The Contractor will promptly notify the Department or Customer upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion (or delivery) of any commodity or contractual service. The Contractor will use commercially reasonable efforts to avoid or minimize any delays in performance and will inform the Department or the Customer of the steps the Contractor is taking or will take to do so, and the projected actual completion (or delivery) time. If the Contractor believes a delay in performance by the Department or the Customer has caused or will cause the Contractor to be unable to perform its obligations on time, the Contractor will promptly so notify the Department and use commercially reasonable efforts to perform its obligations on time notwithstanding the Department's delay.

11.3.2 Liquidated Damages.

The Contractor acknowledges that delayed performance will damage the Department/Customer, but by their nature such damages are difficult to ascertain. Accordingly, the liquidated damages provisions stated in the Contract documents will apply. Liquidated damages are not intended to be a penalty and are solely intended to compensate for damages.

11.4 Force Majeure, Notice of Delay, and No Damages for Delay.

The Contractor will not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay, and the delay is due directly to fire, explosion, earthquake, windstorm, flood, radioactive or toxic chemical hazard, war, military hostilities, terrorism, civil emergency, embargo, riot, strike, violent civil unrest, or other similar cause wholly beyond the Contractor's reasonable control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. The foregoing does not excuse delay which could have been avoided if the Contractor implemented any risk mitigation required by the Contract. In case of any delay the Contractor believes is excusable, the Contractor will notify the Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) calendar days after the cause that created or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) calendar days after the date the Contractor first had reason to believe that a delay could result. The foregoing will constitute the Contractor's sole remedy or excuse with respect to delay. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages will be asserted by the Contractor. The Contractor will not be entitled to an increase in the Contract price or payment of any kind from the Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor will perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State of Florida or to Customers, in which case the Department may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers and the Department with respect to commodities or contractual services subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the commodity or contractual services that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

SECTION 12. CONTRACT AUDITS.

12.1 Performance or Compliance Audits.

The Department may conduct or have conducted performance and/or compliance audits of the Contractor and subcontractors as determined by the Department. The Department may conduct an audit and review all the Contractor's and subcontractors' data and records that directly relate to the Contract. 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 the Contract, may be inspected by the Department upon fifteen (15) calendar 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 Inspector General, in accordance with section 5.6, the State of Florida's Chief Financial Officer, the Office of the Auditor General also have authority to perform audits and inspections.

12.2 Payment Audit.

Records of costs incurred under terms of the Contract will be maintained in accordance with section 8.3 of these Special Contract Conditions. Records of costs incurred will include the Contractor's general accounting records, together with supporting documents and records of the Contractor and all subcontractors performing work, and all other records of the Contractor and subcontractors considered necessary by the Department, the State of Florida's Chief Financial Officer, or the Office of the Auditor General.

SECTION 13. BACKGROUND SCREENING AND SECURITY.

13.1 Background Check.

The Department or Customer may require the Contractor to conduct background checks of its employees, agents, representatives, and subcontractors as directed by the Department or Customer. The cost of the background checks will be borne by the Contractor. The Department or Customer may require the Contractor to exclude the Contractor's employees, agents, representatives, or subcontractors based on the background check results. In addition, the Contractor must 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 must notify the Contract Manager within twenty-four (24) hours of all details concerning any reported arrest. Upon the request of the Department or Customer, the Contractor will re-screen any of its employees, agents, representatives, and subcontractors during the term of the Contract.

13.2 E-Verify.

The Contractor must use the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of the Contract for the services specified in the Contract. The Contractor must also include a requirement in subcontracts that the subcontractor must utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term. In order to implement this provision, the Contractor must provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five (5) calendar days of Contract execution. If the Contractor is not enrolled in DHS E-Verify System, it will do so within five (5) calendar days of notice of Contract award and provide the Contract Manager a copy of its MOU within five (5) calendar days of Contract execution. The link to E-Verify is <https://www.uscis.gov/e-verify>. Upon each Contractor or subcontractor new hire, the Contractor must provide a statement within five (5) calendar days to the Contract Manager identifying the new hire with its E-Verify case number.

13.3 Disqualifying Offenses.

If at any time it is determined that a person has been found guilty of a misdemeanor or felony offense as a result of a trial or has entered a plea of guilty or nolo contendere, regardless of whether adjudication was withheld, 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 as follows:

- (a) Computer related crimes;
- (b) Information technology crimes;

- (c) Fraudulent practices;
- (d) False pretenses;
- (e) Frauds;
- (f) Credit card crimes;
- (g) Forgery;
- (h) Counterfeiting;
- (i) Violations involving checks or drafts;
- (j) Misuse of medical or personnel records; and
- (k) Felony theft.

13.4 Confidentiality.

The Contractor must maintain confidentiality of all confidential data, files, and records related to the commodities or contractual services provided pursuant to the Contract and must comply with all state and federal laws, including, but not limited to sections 381.004, 384.29, 392.65, and 456.057, F.S. The Contractor's confidentiality procedures must be consistent with the most recent version of the Department security policies, protocols, and procedures. The Contractor must also comply with any applicable professional standards with respect to confidentiality of information.

SECTION 14. WARRANTY OF CONTRACTOR'S ABILITY TO PERFORM.

The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the Suspended Vendor List, Convicted Vendor List, or the Discriminatory Vendor List, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Department in writing if its ability to perform is compromised in any manner during the term of the Contract.

**EXHIBIT B
COMPENSATION**

Subscription Services Year 2

Line	MFPN	Description	Qty	Unit Sell	Ext. Sell
2	UKG TELESTAFF CLOUD	UKG TELESTAFF CLOUD Subscription Services	12	\$1,060.00	\$12,720.00
Subtotal:					\$12,720.00

Subscription Services Year 3

Line	MFPN	Description	Qty	Unit Sell	Ext. Sell
3	UKG TELESTAFF CLOUD	UKG TELESTAFF CLOUD Subscription Services	12	\$1,060.00	\$12,720.00
Subtotal:					\$12,720.00

Subscription Services Year 4

Line	MFPN	Description	Qty	Unit Sell	Ext. Sell
4	UKG TELESTAFF CLOUD	UKG TELESTAFF CLOUD Subscription Services	12	\$1,060.00	\$12,720.00
Subtotal:					\$12,720.00

Subscription Services Year 5

Line	MFPN	Description	Qty	Unit Sell	Ext. Sell
5	UKG TELESTAFF CLOUD	UKG TELESTAFF CLOUD Subscription Services	12	\$1,060.00	\$12,720.00
Subtotal:					\$12,720.00

Subscription Services Year 2

Line	MFPN	Description	Qty	Unit Sell	Ext. Sell
9	UKG	UKG DIMENSIONS TIMEKEEPING HOURLY	12	\$4,090.54	\$49,086.48
10	UKG	UKG DIMENSIONS ANALYTICS	12	\$540.60	\$6,487.20
11	UKG	UKG DIMENSIONS DATA HUB ENTERPRISE	12	\$0.00	\$0.00
12	UKG	UKG DIMENSIONS TELESTAFF INTEGRATION	12	\$0.00	\$0.00
Subtotal:					\$55,573.68

Subscription Services Year 3

Line	MFPN	Description	Qty	Unit Sell	Ext. Sell
13	UKG	UKG DIMENSIONS TIMEKEEPING HOURLY	12	\$4,090.54	\$49,086.48
14	UKG	UKG DIMENSIONS ANALYTICS	12	\$540.60	\$6,487.20
15	UKG	UKG DIMENSIONS DATA HUB ENTERPRISE	12	\$0.00	\$0.00
16	UKG	UKG DIMENSIONS TELESTAFF INTEGRATION	12	\$0.00	\$0.00
Subtotal:					\$55,573.68

Subscription Services Year 4

Line	MFPN	Description	Qty	Unit Sell	Ext. Sell
17	UKG	UKG DIMENSIONS TIMEKEEPING HOURLY	12	\$4,090.54	\$49,086.48
18	UKG	UKG DIMENSIONS ANALYTICS	12	\$540.60	\$6,487.20
19	UKG	UKG DIMENSIONS DATA HUB ENTERPRISE	12	\$0.00	\$0.00
20	UKG	UKG DIMENSIONS TELESTAFF INTEGRATION	12	\$0.00	\$0.00
Subtotal:					\$55,573.68

Subscription Services Year 5

Line	MFPN	Description	Qty	Unit Sell	Ext. Sell
21	UKG	UKG DIMENSIONS TIMEKEEPING HOURLY	12	\$4,090.54	\$49,086.48
22	UKG	UKG DIMENSIONS ANALYTICS	12	\$540.60	\$6,487.20
23	UKG	UKG DIMENSIONS DATA HUB ENTERPRISE	12	\$0.00	\$0.00
24	UKG	UKG DIMENSIONS TELESTAFF INTEGRATION	12	\$0.00	\$0.00
Subtotal:					\$55,573.68

Omnia Contract OEMs

OEM	% off Commercial List Price
Accela	5%
Acquia	8%
Adobe	2%
Akamai	15%
Alalyst Platform	2%
Arista	7%
Arista	7%
AttackIQ	3%
AWS	5%
Box	10%
Bricata	2%
Broadcom	5%
CA Technologies	5%
Carbon Black	5%
Centrify	5%
CheckMarx	10%
Cinemassive	5%
Cisco	40%
CiscoDuo	8%
Citrix	7%
Cloudbees	5%
Cofense	10%
Cohesity	10%
Contrast	2%
CoreLight	2%
CrowdStrike	10%
CyberArk	6%
Cylance	7%
Dark Owl	2%
Decision Lens	5%
Dell	5%
Dell Servers	25%
Dell Storage	30%
Demisto	2%
Digital Shadows	2%
DocuSign	8%
Elastic	2%
EMC	30%
Exabeam	12%
Exiger	2%

Extrahop	5%
F5	8%
Fidelis	2%
FireEye	6%
Flashpoint	2%
Forescout	6%
Fortify	2%
Gigamon	6%
Google	5%
Granicus	7%
Hewlett Packard	5%
HPE	10%
IBM	2%
iBoss	5%
Infoblox	8%
Infor	5%
Intel	2%
Interos	2%
Juniper	45%
KnowB4	3%
Kofax	6%
Linkedin	5%
Lookout	2%
McAfee	9%
MediGate	5%
Microfocus	5%
Microsoft	5%
NetApp	20%
New Relic	3%
Nutanix	7%
Nvidia	2%
Okta	15%
One San	5%
OPSWAT	2%
Palo Alto	5%
Pentax	2%
Phantom	2%
Proofpoint	5%
PulseSecure	2%
Pure Storage	40%
Quantum	10%
Recorded Future	10%
RedHat	6%

RedSeal	15%
Riverbed	10%
RSA	6%
Rubrik	20%
Salesforce	5%
SAP	5%
Sayari	2%
Scality	10%
SecureAuth	14%
Secureworks	5%
ServiceNow	4%
Skybox	5%
Snowflake	5%
Solarwinds	2%
Splunk	4%
Sprinklr	5%
SumoLogic	5%
Swimlane	5%
Symantec	12%
Tableau	5%
Tanium	10%
Tenable	5%
Thales	1%
Thompson Reuters	5%
Thycotic	2%
Titus	12%
Trustwave	10%
UiPath	5%
Varonis	4%
vbrick	20%
Veeam	10%
Veritas	6%
VMWare	5%
WellSky	5%
Zerto	2%
zScaler	10%

Thundercat Technology - Contract # R210406
Approved OEM's Post Award

OEM	Discount off List	Date Approved
Scheidt-Bachmann	3%	2022_02_01
SuperMicro	2%	2022_02_03
Google:	3%	2022_03_31
<ul style="list-style-type: none"> Workspace 		
<ul style="list-style-type: none"> Maps 		
<ul style="list-style-type: none"> Apigee 		
<ul style="list-style-type: none"> Looker 		
Calero-MDSL Hosted Solutions and Maintenance Services	3% off Retail	2022_04_11
Calero-MDSL PINNACLE Modules:	3% off Retail	2022_04_11
<ul style="list-style-type: none"> Service Manager 		
<ul style="list-style-type: none"> Usage Manager 		
<ul style="list-style-type: none"> Optimization Manager 		
<ul style="list-style-type: none"> Chargeback Manager 		
<ul style="list-style-type: none"> Invoice Manager 		
<ul style="list-style-type: none"> Infrastructure Manager 		
<ul style="list-style-type: none"> Insight Analytics Users 		
CRG Mapping Technology	3% off List	2022_07_05
TechSmith	2% off List	2022_07_28
Automox	5% off List	2022_08_18
Commvault	3% off List	2022_08_18
Cradlepoint	5% off list	2022_09_19
Beyond Identity	2% off list	2022_09_29
Rave Mobile Safety	2% off list	2022_09_29
Hexagon Software	2% off list	2022_09_29
Meltwater	3% off list	2022_09_29
Absolute	2% off list	2022_10_05
Buffalo	5% off list	2022_10_18
Synology	2% off list	2022_10_18
Zoho	2% off list	2022_10_25
Auto Desk	2% off list	2022_11_04
Aiden	2% off list	2022_11_04
Tintri	5% off list	2022_11_04
Agilebits dba 1Password	2% off list	2022_11_09
Halivision (Cinemassive)	2% off List	2023_31_21
Verkada	2% off list	2023_04_18
UKG (Kronos)	2% off list	2023_06_14
SitelImprove	2% off list	2023_06_14
Patch My PC	2% off list	2023_08_15
Mitek Systems	2% off list	2023_08_15
Tricentus	2% off list	2023_08_15
OpenGov	2% off list	2023_08_22
Epic iO	5% off list	2023_10_30
Coreview	2% off list	2023_11_06



Request for Vendor Contract Update

Pursuant to the terms of your awarded vendor contract, all vendors must notify and receive approval from Region 4/OMNIA Partners, Public Sector when there is an update in the contract. No request will be officially approved without the prior authorization of Region 4. Region 4 reserves the right to accept or reject any request.

ThunderCat Technology, LLC hereby provides notice of the following update to
(Vendor Name)

Contract number: R210406 for Technology Solutions, Products and Services on this date 05/24/2022.
Contract Title

Instructions: Vendors must check all that may apply and shall provide supporting documentation. Place your initials next to each item to confirm that documents are indeed included. Request received without supporting documentation will be returned. Be sure to sign prior to submitting your update for approval. **This form is not intended for use if there is a material change in operations, which may adversely affect members, i.e. assignment, bankruptcy, change of ownership, merger, etc. Please contact a member of the OMNIA Partners Contracting Team to request a "Notice of Material Change to Vendor Contract" form.**

☐ **Authorized Distributors/Dealers**

____ Addition

____ Deletion

____ Supporting Documentation

☒ **Products/Services**

☒ New Addition

____ Update Only

____ Supporting Documentation

☐ **States/Territories**

____ Supporting Documentation

☐ **Price Update**

____ Supporting Documentation

☐ **Discontinued Products/Services**

____ Supporting Documentation

☐ **Other** _____

____ Supporting Documentation

Notes: Vendor may include other notes regarding the contract update here: (attach another page if necessary).

Professional Services

Submitted By: [Signature]

Title: Contracts

Contact Number: 301-996-0140

Email Address: jkim@thundercattech.com

☐ **Approved Date** 5/30/2022 | 5:34 PM CDT

☐ **Denied Date** _____

DocuSigned by:
Region 4 ESC: Robert Engelmann
0B1D33BB0130490...

Normal Business Hours

Tcat Contract # R210406 Labor Rates

	Position	Description Of Services Provided	Hourly Rate
1	Network Administrator	Designs Intranet/Internet/Extranet architectures and develops implementations plans; administration activity; i.e., hardware, security, firewalls. Implements security architecture using LDAP, SSL and firewalls. Installs, configures and maintains all Intranet/Internet/Extranet tools, databases and features; provides support to e-commerce and other systems. Implements server design, development, and operation as well as analyze and develop requirements for hardware sizing/capacity, data validation, security and integration points to other applications.	\$230.00
2	Installation Technician	Provides supervision, person provides technical or scientific and project support for multiple large-scale projects that cross-cut multiple specialization and product development areas. Applies advanced business and/or technical expertise to assist others with defining, analyzing, validating and documenting complex customer operating environments, states of technology and current engineering processes. Provides advanced technical support to others involved in applying specialized knowledge to complex customer processes and requirements. Supports complex technical investigations through advanced research techniques, analysis or development phases of engineering projects. Works with other engineering disciplines in the development and application of processes to improve quality, reliability, cost customer appeal, and satisfaction.	\$271.00
3	Maintenance Technician	Working under close supervision, person provides technical or scientific and project support for multiple large-scale projects that cross-cut multiple specialization and product development areas. Applies advanced business and/or technical expertise to assist others with defining, analyzing, validating and documenting complex customer operating environments, states of technology and current engineering processes. Provides advanced technical support to others involved in applying specialized knowledge to complex customer processes and requirements. Supports complex technical investigations through advanced research techniques, analysis or development phases of engineering projects. Works with other engineering disciplines in the development and application of processes to improve quality, reliability, cost customer appeal, and satisfaction.	\$236.00
4	Trainer	Possesses a thorough understanding of the process requirements and provide both technical and management oversight of the project to deliver a superior training module. Responsible for all aspects of training material development, delivery, and customer satisfaction, serves as the single point of contact.	\$229.59
5	Senior Information Architect	Provides supervision, person designs Intranet/Internet/Extranet architectures and develops implementations plans; administration activity; i.e., hardware, security, firewalls. Implements security architecture using LDAP, SSL and firewalls. Installs, configures and maintains all Intranet/Internet/Extranet tools, databases and features; provides support to e-commerce and other systems. Implements server design, development, and operation as well as analyze and develop requirements for hardware sizing/capacity, data validation, security and integration points to other applications.	\$294.34
6	Senior Project Manager	Provides supervision, person possesses a thorough understanding of the process requirements and provide both technical and management oversight of the project. Responsible for customer satisfaction, serves as the single point of contact, compliance with the Statement of Work, project planning and management, resource allocation, and reporting.	\$287.95

**EXHIBIT C
TASK AUTHORIZATION**

TASK AUTHORIZATION No. ____ & TITLE

Pursuant to the Agreement for _____ entered into by and between the Lee County Port Authority (Authority) and _____ (Provider), a determination has been made by the Authority that there is a need for the performance of services by the Provider, as specifically set forth in this Task Authorization.

Objective:

Lee County Port Authority's objective is

Scope of Services:

Provider is authorized to perform or render the services as described as follows:

Task 1: (for each task, insert detailed description of work to be performed. The time to complete the task may be indicated)

Task 2:

Task 3:

Compensation:

Compensation to the Provider for this Task Authorization will not exceed \$_____. Total compensation for the work to be performed must not exceed the amounts itemized below as follows:

Task 1: \$

Task 2: \$

Task 3: \$

TOTAL:

Communication Plan:

____ calendar days from the date of a fully executed task authorization is required to perform the services; therefore, all services must be complete and accepted by the Authority no later than _____.

By: _____

By: _____
Lee County Port Authority

Date: _____

Date: _____

**EXHIBIT D
TASK AUTHORIZATION AMENDMENT**

AMENDMENT No. ____ TO TASK AUTHORIZATION No. ____ & TITLE

Pursuant to Article 4.2 of the Agreement for _____ entered into by and between the Lee County Port Authority (Authority) and _____ (Provider), the following change to the referenced Task Authorization is required to continue the performance of services by the Provider, as specifically set forth in this Task Authorization amendment.

Explanation of Change:

Scope of Services:

Provider is authorized to perform or render the services as described as follows:

Compensation:

ORIGINAL TASK AUTHORIZATION:	\$ _____
TASK AUTHORIZATION AMENDMENT INCREASE:	\$ _____
TOTAL REVISED TASK AUTHORIZATION COST:	\$ _____

Schedule:

____ calendar days from the date of a fully executed task authorization amendment is required to perform the services; therefore, the revised date for all services to be completed and accepted by the Authority must occur no later than _____.

ORIGINAL NUMBER OF DAYS TO COMPLETION/ACCEPTANCE:	_____
ADDITIONAL NUMBER OF DAYS TO COMPLETION/ACCEPTANCE:	_____
TOTAL REVISED DAYS TO COMPLETION/ACCEPTANCE:	_____

By: _____

By: _____
Lee County Port Authority

Date: _____

Date: _____

EXHIBIT E INSURANCE

During the term of the Agreement and at all times without interruption, Provider must provide, pay for, and maintain the types and limits of insurance in accordance with this section. The acceptance by Authority of any certificate of insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or agreement by Authority that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance comply with the requirements of this Agreement. No work will commence, or any Services be provided, under this Agreement unless and until the required certificates of insurance are received and approved by Authority.

INSURANCE REQUIRED (Types and Limits)

Commercial General Liability - Provider must provide the following types of insurance with minimum limits as indicated:

\$2,000,000	General Aggregate
\$1,000,000	Products & Completed Operations Aggregate
\$1,000,000	Personal/Advertising Injury
\$1,000,000	Each Occurrence
\$50,000	Fire Damage
\$5,000	Medical Expenses

Such insurance must be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements. An excess liability policy or umbrella policy can be used to satisfy the above limits.

Workers' Compensation - Insurance as required by the State of Florida, and Employers' Liability insurance with minimum limits as indicated:

Worker's Compensation	Florida Statutory Coverage	
Employer's Liability	\$1,000,000	Each Accident
	\$1,000,000	Disease Policy Limit
	\$1,000,000	Each Employee/Disease

This insurance must cover Provider (and, to the extent they are not otherwise insured, its subcontractors) for those sources of liability which would be covered by the latest edition of the standard workers' compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements).

Cyber Insurance - Provider must maintain, at its own expense throughout the Term, cyber liability insurance coverage or a cyber liability insurance rider in the Errors and Omissions policy providing privacy response coverage and third party liability coverage covering Provider for claims, losses, liabilities, judgements, settlements, lawsuits, regulatory actions, and other costs or damages arising out of its performance under this Agreement, including any negligent or otherwise wrongful acts or omissions by Provider or any employee or agent thereof in such amounts and on such terms as are

reasonably acceptable to the Authority, but in no event less than the following in the amount of at least \$2,000,000 for each occurrence and at least \$4,000,000 in the aggregate. This includes, but is not limited to: any breach of any law or regulation governing confidentiality of PHI (as defined under HIPAA) and Personal Information (as defined under the PA Act). Upon request, Provider must furnish to the Authority, as evidence of coverage, a certificate of insurance for Cyber Liability and/or Errors and Omissions insurance. Provider must not cancel or reduce any such insurance without prior written consent of the Authority. Provider must notify Authority in writing within five (5) business days if it receives notice that its insurance carrier intends to terminate, cancel, non-renew or rescind cyber liability insurance or errors and omissions insurance.

Additional Insured - The Authority must be named as an additional insured on all policies except for workers' compensation and professional liability. The policies must be endorsed to include the following language "Lee County Port Authority, its officers, officials and employees, are to be covered as an additional insured with respect to liability arising out of the 'work' or operations performed by or on behalf of the insured, including materials, parts or equipment furnished in connection with such work or operations."

Acceptability of Insurers - Insurance is to be placed with insurers duly licensed and authorized to do business in the State of Florida and with an AM Best rating of not less than A-Vii. The Authority in no way warrants that the above required minimum insurer rating is sufficient to protect the Provider from potential insurer insolvency.

Waiver of Subrogation - Insurance will be primary and noncontributory and will include a Waiver of Subrogation by both the Provider and its insurers in favor of the Authority on all policies including general liability, auto liability and the workers' compensation policy, as well as any umbrella or excess policy coverage.

Certificate of Insurance (COI) - Prior to the issuance of a purchase order, and then annually upon the anniversary date(s) of the insurance policy(s) renewal date for as long as the agreement is in effect, the Provider will furnish the Authority with a certificate of insurance using an ACORD form and containing the Agreement Title with Lee County Port Authority named as an additional insured on the applicable coverage set forth above. The appointed insurance agent or carrier will be duly licensed to provide coverage and honor claims within Florida. Provider must ensure the certificate of insurance with Lee County Port Authority as certificate holder is delivered to riskmanagement@flylcpa.com. The certificate of insurance must give the Authority prior notice of cancellation and state that the coverage is primary and noncontributory.

Policy on Request - If requested in writing by the Authority, the Provider will supply to the Authority a certified copy of all applicable insurance policies required by this Agreement.

Change in Coverage - Provider is required to provide a minimum of thirty (30) days written notice to the Authority Risk Manager of any cancellation, nonrenewal, termination, material change, or reduction of any coverage required herein. All such notices will be sent directly to Lee County Port Authority Risk Manager, 11000 Terminal Access Road, Suite 8671, Fort Myers FL, 33913. If the Provider fails to provide the requisite notice, the Authority may terminate any Agreement(s) with the Provider.

Subcontractor's Requirement - Provider must ensure its subcontractors comply with these insurance requirements.

Failure to Maintain Insurance - If Provider does not maintain the insurance coverages required by this Agreement at any time, upon notice to Provider and reasonable opportunity to cure, Authority may

cancel the Agreement or at its sole discretion is authorized to purchase such coverages and charge Provider for such coverages purchased. Authority will be under no obligation to purchase such insurance, nor will it be responsible for the coverages purchased or the insurance company/companies used. The decision of Authority to purchase such insurance coverages will in no way be construed to be a waiver of its rights under this Agreement.

Provider agrees to provide Authority's Risk Manager with a certificate of insurance indicating that all policies have been endorsed to provide advance written notice of any cancellation, intent not to renew, material change or alteration, or reduction in the policy coverages except in the application of the aggregate limits provision of any policy. In the event of a reduction in the aggregate limit of any policy, Provider will immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy. If there is a cancellation, Provider agrees to obtain replacement coverage as soon as possible. All insurance will be from responsible companies duly authorized to do business, provide coverage, and honor claims in the state of Florida.

The Authority reserves the right to reject insurance written by an insurer it deems unacceptable because of poor financial condition or other operational deficiency. All insurance must be placed with insurers with an A.M. Best rating of not less than A-VII. Regardless of this requirement, the Authority in no way warrants that the required minimum insurer rating is sufficient to protect Provider from potential insurer insolvency.

The acceptance by the Authority of any certificate of insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or agreement by the Authority that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance comply with the requirements of this Agreement.

All of Provider's insurance coverages will be primary and noncontributory to any insurance or self-insurance program carried by the Authority and applicable to work under this Agreement and will include a waiver of subrogation in favor of the Authority.

No work will commence, or any services or products be provided, under this Agreement unless and until the required certificates of insurance are received and approved by the Authority.