

NASPO ValuePoint
PARTICIPATING ADDENDUM

CLOUD SOLUTIONS

Administered by the State of Utah (hereinafter "Lead State")

Alternate Contract Source No: 43230000-NASPO-16-ACS

EC America, Inc., a wholly owned subsidiary of immixGroup, Inc.

Master Agreement No: AR2496
(hereinafter "Contractor")

And

Florida Department of Management Services
(hereinafter "Department/Participating State/Entity")

The State of Utah, acting by and through the National Association of State Procurement Officials (NASPO) ValuePoint, competitively procured and awarded a Request for Proposal resulting in Master Agreement AR2496. The Master Agreement was created as a cooperative purchasing agreement for Cloud Solutions. This Participating Addendum is entered into pursuant to section 287.042, Florida Statutes.

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."

The Secretary evaluated the Master Agreement, and hereby acknowledges that use of the Master Agreement as an Alternate Contract Source (ACS) is cost-effective and the best value to the State. Accordingly, agencies (Customer) may make purchases from this Participating Addendum pursuant to the terms and conditions herein.

This Participating Addendum and all incorporated Exhibits set forth the entire understanding of the Parties and supersedes all prior agreements.

Accordingly, the Parties agree as follows:

1. Term and Effective Date

The initial term of this Participating Addendum will begin on the date the document is signed by all Parties, and shall be effective through September 15, 2026, unless terminated earlier in accordance with the Special Contract Conditions.

2. Modifications or Additions to Master Agreement

The following changes are modifying or supplementing the Master Agreement terms and conditions.

- a. Scope: The Contractor's Master Agreement products or services listed on the Contractor's page of the NASPO ValuePoint website are included in this contract only if they are not offered on a State Term Contract or not available as a SUNCOM service. A state agency granted an exemption pursuant to section 282.703, Florida Statutes, may purchase the exempted product(s) and/or service(s) offered on the Contractor's Master Agreement under this Participating Addendum pursuant to the terms and conditions herein.
- b. Exhibits: All Exhibits attached and listed below are incorporated in their entirety into, and form part of this Participating Addendum. The Participating Addendum Exhibits are labeled as follows:

- 1) Exhibit A: Additional Special Contract Conditions
- 2) Exhibit B: Special Contract Conditions
- 3) Exhibit C: [NASPO ValuePoint Master Agreement Number AR2496](#)
- 4) Exhibit D: Contractor Selection Justification Form

If a conflict exists among any of the documents, the following shall have priority in the order listed below:

- 1) The Participating Addendum for State of Florida
 - 2) Exhibit A: Additional Special Contract Conditions
 - 3) Exhibit B: Special Contract Conditions
 - 4) Exhibit C: NASPO ValuePoint Master Agreement Number AR2496
- c. Participation: Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions, and other entities (including cooperatives) authorized by an individual state's statutes are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
- d. Cloud Computing Requirements: The Contractor agrees to cooperate with the Department and Customers and perform all actions necessary to assist with all tasks in furtherance of the Department's and/or Customer's efforts to comply with the obligations under Rule Titles 60FF and 60GG, Florida Administrative Code (F.A.C.), as applicable. This includes, but is not limited to, adherence to the cloud computing requirements set forth in Rule Chapter 60GG-4, F.A.C.
- e. Authorization: Approval of this Participating Addendum by the State Chief Procurement Official and State Chief Information Officer is an authorization for participation in the NASPO cooperative contract process; it is not intended as an approval of any specific purchase or solution. It is the responsibility of the Customer to validate all terms and conditions and to ensure compliance with all applicable statutes and rules.
- f. Request for Quotes: Customers purchasing Cloud Solutions from this Participating Addendum shall create a Request for Quote (RFQ) each time they desire to purchase Cloud Solutions. The Customer shall issue a detailed RFQ to the ACS Contractor(s) who offer(s) the applicable cloud solution(s). The specific format of the RFQ is left to the discretion of the Customer, but must contain the following:
- 1) Applicable service and deployment model(s);
 - 2) Data security classification;
 - 3) Service level agreement requirements; and
 - 4) Exit strategy considerations.
- g. Enterprise Agreements: The Contractor shall honor any Volume or Enterprise Agreement(s) established between a State of Florida agency and the manufacturer of products or services offered under their Master Agreement.
- h. Purchase Orders: Customers shall issue purchase orders under this Participating Addendum to their awarded RFQ Contractor using this State of Florida ACS number 43230000-NASPO-16-ACS. The purchase order period survives the expiration of the Contract. The duration of purchase orders must not exceed the expiration of the Contract by more than 12 months.

- i. Contractor Selection Justification Form: Customers purchasing Cloud Solutions from this Participating Addendum shall attach to the purchase order a completed Contractor Selection Justification Form (Exhibit D) of this Participating Addendum, incorporated herein by reference and accessible at:
https://www.dms.myflorida.com/business_operations/state_purchasing/state_contracts_and_agreements/alternate_contract_source/cloud_solutions/forms.

3. Warranty of Authority

Each person signing this document warrants that he or she is duly authorized to do so and to bind the respective party.

4. Entire Agreement of the Parties

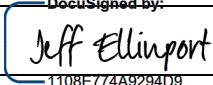
This document and the attached exhibits constitute the Participating Addendum and the entire understanding of the parties.

5. Amendments

All modifications to this Participating Addendum must be in writing and signed by all Parties. No oral modifications to this Participating Addendum are permitted.

Notwithstanding the order listed in Section 2.b, amendments executed after the Participating Addendum is executed may expressly change the provisions of the Participating Addendum. If they do so expressly, then the most recent amendment will take precedence over anything else that is part of the Participating Addendum.

IN WITNESS THEREOF, the Parties hereto have caused this agreement, which includes the attached and incorporated Exhibits, to be executed by their undersigned officials as duly authorized. This agreement is not valid and binding until signed and dated by the Parties.

Participating State: Florida	Contractor: EC America, Inc.
By:	By:  DocuSigned by:
Name: J. Todd Inman	Name: 1108E774A9294D9... Jeff Ellinport
Title: Secretary	Title: Legal Affairs Director
Date:	Date: 9/1/2021 11:18 AM EDT

- i. **Contractor Selection Justification Form:** Customers purchasing Cloud Solutions from this Participating Addendum shall attach to the purchase order a completed Contractor Selection Justification Form (Exhibit D) of this Participating Addendum, incorporated herein by reference and accessible at:
https://www.dms.myflorida.com/business_operations/state_purchasing/state_contracts_and_agreements/alternate_contract_source/cloud_solutions/forms.

3. Warranty of Authority

Each person signing this document warrants that he or she is duly authorized to do so and to bind the respective party.

4. Entire Agreement of the Parties

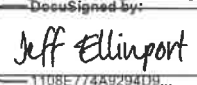
This document and the attached exhibits constitute the Participating Addendum and the entire understanding of the parties.

5. Amendments

All modifications to this Participating Addendum must be in writing and signed by all Parties. No oral modifications to this Participating Addendum are permitted.

Notwithstanding the order listed in Section 2.b, amendments executed after the Participating Addendum is executed may expressly change the provisions of the Participating Addendum. If they do so expressly, then the most recent amendment will take precedence over anything else that is part of the Participating Addendum.

IN WITNESS THEREOF, the Parties hereto have caused this agreement, which includes the attached and incorporated Exhibits, to be executed by their undersigned officials as duly authorized. This agreement is not valid and binding until signed and dated by the Parties.

Participating State: Florida	Contractor: EC America, Inc.
By: 	By: 
Name: J. Todd Inman	Name: Jeff Ellinport
Title: Secretary	Title: Legal Affairs Director
Date: 9/15/2021	Date: 9/1/2021 11:18 AM EDT



ADDITIONAL SPECIAL CONTRACT CONDITIONS EXHIBIT A

The Contractor and Customers acknowledge and agree to be bound by the terms and conditions of the Master Agreement except as otherwise specified in the Department's Contract as modified and supplemented by the Special Contract Conditions and these Additional Special Contract Conditions.

Contractor acknowledges that the Participating State is an agency of the State of Florida and as such, the Contract will include the terms and conditions in these Additional Special Contract Conditions. All references to the Contract in these Additional Special Contract Conditions include the terms and conditions herein.

- A. Information Technology Standard: Pursuant to sections 282.0051 and 282.318, F.S., the Department is to establish standards for the implementation and management of information technology resources. Contractor agrees to cooperate with the Department and Customer in furtherance of efforts to comply with the standards, established in Rule Title 60GG, F.A.C., as applicable.
- B. Annual Certification: At the request of the Department or the Customer, the Contractor will submit an annual certification demonstrating compliance with the Warranty of Security in accordance with the standards established in Rule Title 60GG, F.A.C.
- C. Orders: Contractor must be able to accept the State of Florida Purchasing Card and MyFloridaMarketPlace (MFMP) purchase orders.
- D. Contractor and Applicable 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 because of any failure of a subcontractor, reseller, distributor, or dealer. The Contract terms are applicable to subcontractors, resellers, distributors, and dealers and shall apply to the Contractor's applicable subcontractors, affiliates, partners, resellers, distributors, and dealers providing commodities and performing services in furtherance of the Contract. The Contractor is fully responsible for satisfactory completion of all work performed under the Contract.
- E. Purchases Prerequisites: Before fulfilling any Customer purchases and receiving payment, the Contractor and applicable subcontractors, affiliates, partners, resellers, distributors, and dealers must have met the following requirements, unless further notated below:
 - 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>) *only required by applicable subcontractors, affiliates, partners, resellers, distributors, and dealers if receiving payment.
- Not be on the State's Convicted, Suspended, Antitrust Violator, or Discriminatory Vendor lists (http://www.dms.myflorida.com/business_operations/State_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists)
- Have a copy of e-Verify Status on file
- Have a current W-9 filed with the Florida Department of Financial Services (<https://flvendor.myfloridacfo.com>) *only required by applicable Subcontractors, Affiliates, Partners, Resellers, Distributors, and Dealers if receiving payment.

F. MFMP Electronic Invoicing: 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.

The Contractor will work with the MFMP management team to obtain specific requirements for the electronic invoicing if needed.

G. Contract Reporting: The Contractor shall provide the following reports associated with this Contract.

- 1) Contract Quarterly Sales Reports. The Contractor shall submit 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). The Contractor's first Quarterly Sales Report will be due 30 calendar days after the first full quarter following Contract execution.

Reports must be submitted in MS Excel format and can be retrieved by accessing the following link at [FL DMS Quarterly Sales Report Form](#). The report shall include all Customer sales received and associated with this Contract during the quarter. Initiation and submission of the Quarterly Sales Report is the responsibility of the Contractor without prompting or notification from the Department's Contract Manager. If no orders are received during the period, the Contractor must submit a report stating that there was no activity. If the Contractor fails to submit two consecutive quarterly sales reports, the Contract may be terminated, or the Department may choose to not renew the Contract.

- 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 within the timeframe specified by the Department.
 - 4) MFMP Transaction Fee Reports. The Contractor shall submit 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 on the [Transaction Fee and Reporting website](#). Assistance with the transaction fee reporting system is also available from the MFMP Customer Service Desk 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.
- H. Financial Consequences: The following financial consequences will apply for the Contractor's non-performance of the provision of the Quarterly Sales Reports and the MFMP Transaction Fee Reports. 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 these provisions of the Contract. The Contractor and the Department agree that the financial consequences for non-performance are an estimate of damages which are difficult to ascertain and are not penalties.

The financial consequences will be paid via check or money order and made out to the Department of Management Services in U.S. dollars within 30 calendar days after the required report submission date. These consequences 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 (Per Calendar Day Late/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	Reports are due on or before the 30 th calendar day after the close of each State fiscal quarter	\$250
Contractor will timely submit complete MFMP Transaction Fee Reports	All MFMP Transaction Fee Reports will be submitted timely with the required information	Reports are due on or before the 15 th calendar day after the close of each month	\$100

Quarterly reporting timeframes coincide with the State Fiscal Year as follows:

- Quarter 1 - (July-September) – due 30 calendar days after close of the period
- Quarter 2 - (October-December) – due 30 calendar days after close of the period
- Quarter 3 - (January-March) – due 30 calendar days after close of the period
- Quarter 4 - (April-June) – due 30 calendar days after close of the period

The Department may not consider renewal of a Contract or price adjustments if the Contractor is late on submitting required reports or for outstanding fees owed.

- I. Business Review Meetings: Both the Department and Customer reserve the right to schedule business review meetings. The Department or Customer will provide the format for the Contractor's agenda. In the event the Department or Customer schedules a business review meeting, the Contractor shall submit the completed agenda to the Department or Customer for review and acceptance prior to the meeting. The Contractor shall address the agenda items and any of the Department's or Customer's additional concerns at the meeting. At a minimum, the agenda items may include:
 - a. Contract compliance
 - b. Savings report (in dollar amount and cost avoidance)
 - c. Spend reports by Customer

d. Recommendations for improved compliance and performance

Failure to comply with this section may result in the Contractor being placed on a Corrective Action Plan and possible termination of the Contract.

J. The following subsections of the Special Contract Conditions are replaced in their entirety or added as follows:

a) 2.2 Renewal.

Upon written agreement, the Department and 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.

b) 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) Florida Statutes, the Contractor shall ensure a representative will be available to team members of the continuing oversight team.

c) 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.

d) 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 any costs associated with the performance of and conducting such an audit contemplated in this section. 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.

e) 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, 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. However, the Vendor shall not be required to indemnify for that portion of any loss or damages proximately caused by the act or omission of the State or a Customer. Contractor's obligation to the foregoing indemnification obligations are conditioned upon the following: (i) the State of Florida promptly notifies Contractor in writing no later than sixty (60) days after the State of Florida's receipt of notification of a potential claim and (ii) the State of Florida provides Contractor, at Contractor's request and expense, with the assistance, information and authority necessary to perform Contractor's indemnification obligations under this Section. Notwithstanding the foregoing, Contractor shall have no liability for any claim of infringement based on (a) the Customer's use of a superseded or altered release of the provided software after Contractor has notified Customer in writing of the most current unaltered release of software if the infringement would have been avoided by the use of a current unaltered release of the software made available for use by the Contractor for the Customer, (b) the Customer's modification of the software not authorized by the Contractor, or (c) the use of the software other than in accordance with the Documentation or this contract. "Documentation" shall mean Contractor's software manufacturer's then current help guides, specifications and operating manuals issued by the Contractor's software manufacturer available to Customers either on-line or in hard copy. If the provided software is held to infringe or are believed by Contractor to infringe, Contractor shall have the option, at its expense, to (a) replace or modify the software to be non-infringing, or (b) obtain for the State of Florida a license to continue using the software. If it is not commercially reasonable to perform either of the foregoing options, then Contractor may terminate the program license for the infringing software after

providing the Department and Customers with 10 business days advance written notice of Contractor's need to terminate both the Contractor's and Customer's respective rights and obligations under the Customer's agreement. Contractor will refund the license fees paid for the software upon return of the infringing software by 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.

f) 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.

g) 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 CONTRACT MANAGER LISTED IN SECTION 4.3 OF THE SPECIAL CONTRACT CONDITIONS.

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.

h) 8.4.1 Ownership

If explicitly provided in a separate written agreement between the Contractor and the Customer that sets forth the transfer of ownership rights, the State of Florida shall be the owner of all intellectual property rights to all property created or developed in connection with the Contract.

i) 8.4.2 Patentable Inventions or Discoveries

If explicitly provided in a separate written agreement between the Contractor and the Customer that sets forth the transfer of ownership rights, 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.

j) 8.4.3 Copyrightable Works

If explicitly provided in a separate written agreement between the Contractor and the Customer that sets forth the transfer of ownership rights, 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.

k) 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. Unless otherwise agreed to in writing, 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.

l) 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, the State of Florida's Chief Financial Officer, and the Office of the Auditor General shall also have authority to perform audits and inspections.

m) 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 initial background checks performed at time of hire 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. 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.n) 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.

o) 12.3 Document Inspection.

In accordance with section 216.1366, F.S., the Department 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 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 within 10 Business Days after the request is made.

Exhibit C

SPECIAL CONTRACT CONDITIONS JULY 1, 2019 VERSION

Table of Contents

SECTION 1. DEFINITION.....	2
SECTION 2. CONTRACT TERM AND TERMINATION	2
SECTION 3. PAYMENT AND FEES.....	3
SECTION 4. CONTRACT MANAGEMENT.....	4
SECTION 5. COMPLIANCE WITH LAWS.....	6
SECTION 6. MISCELLANEOUS.....	7
SECTION 7. LIABILITY AND INSURANCE.....	9
SECTION 8. PUBLIC RECORDS, TRADE SECRETS, DOCUMENT MANAGEMENT, AND INTELLECTUAL PROPERTY.....	10
SECTION 9. DATA SECURITY.....	12
SECTION 10. GRATUITIES, LOBBYING, AND COMMUNICATIONS.....	13
SECTION 11. CONTRACT MONITORING.....	14
SECTION 12. CONTRACT AUDITS.....	15
SECTION 13. BACKGROUND SCREENING AND SECURITY.....	16
SECTION 14. WARRANTY OF CONTRACTOR'S ABILITY TO PERFORM.....	17

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.

Cloud Solutions
Alternate Contract Source No. 43230000-NASPO-16-ACS
Contract Exhibit D

CONTRACTOR SELECTION JUSTIFICATION FORM

Customers must complete this Contractor Selection Justification Form and attach it to the Purchase Order.

Date: Click or tap here to enter text.

Contractor's Name: Click or tap here to enter text.

Service Model:

Saas ☐ PaaS ☐ IaaS¹ ☐

1 In accordance with Rule 60GG-3.004, F.A.C., "The acquisition of data center services, including IaaS, will be accomplished by customer entities submitting a Service Request to the State Data Center."

Level of Risk:

Low Risk Data ☐ Moderate Risk Data ☐ High Risk Data ☐

Description of Services:

Click or tap here to enter text.

Estimated Total Contract Value: Click or tap here to enter text.

Justification for Selection of Contractor:

Click or tap here to enter text.

Completed By: Click or tap here to enter text.

Title: Click or tap here to enter text.