



**State Term Contract  
No. 22100000-21-STC  
Construction and Industrial Equipment**

This Contract is between the State of Florida, Department of Management Services (Department), an agency of the State of Florida, and **CNH Industrial America, LLC** (Contractor), collectively referred to herein as the "Parties."

Accordingly, the Parties agree as follows:

**I. Initial Contract Term.**

The Initial Contract Term shall be for three years. The Initial Contract Term shall begin on July 1, 2021, or on the last date, it is signed by all Parties, whichever is later. The Contract shall expire on June 30, 2024, unless terminated earlier in accordance with the Special Contract Conditions.

**II. Renewal Term.**

Upon mutual written agreement, the Parties may renew this Contract, in whole or in part, for a Renewal Term not to exceed the Initial Contract Term, pursuant to the incorporated Special Contract Conditions.

**III. Contract.**

As used in this document, "Contract" (whether or not capitalized) shall, unless the context requires otherwise, include this document and all incorporated Attachments, which set forth the entire understanding of the Parties and supersedes all prior agreements. All modifications to this Contract must be in writing and signed by all Parties.

All Attachments listed below are incorporated in their entirety into and form part of, this Contract. The Contract Attachments shall have priority in the order listed:

- a) Attachment 1, Special Contract Conditions
- b) Attachment 2, Scope of Work
- c) Attachment 3, Price Quote Form
- d) Attachment 4, Acknowledgement of Order
- e) Attachment 5, Preferred Pricing Affidavit
- f) Attachment 6, Contractor's Submitted Product Group Discount
- g) Attachment 7, Price Sheet

**IV. Contract Management.**

**Department's Contract Manager:**

Shaveon Nelson  
Division of State Purchasing  
Florida Department of Management Services  
4050 Esplanade Way, Suite 360  
Tallahassee, Florida 32399-0950  
Telephone: (850) 922-1214  
Email: [Shaveon.Nelson@dms.fl.gov](mailto:Shaveon.Nelson@dms.fl.gov)


**Contractor's Contract Manager:**

Mike Sheaffer  
CNH Industrial America, LLC  
500 Diller Ave, MS 248  
New Holland, Pennsylvania 17557  
Telephone: (717) 413-6071  
Email: [mike.sheaffer@newholland.com](mailto:mike.sheaffer@newholland.com)

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

**CONTRACTOR  
CNH INDUSTRIAL AMERICA, LLC**

**STATE OF FLORIDA  
DEPARTMENT OF  
MANAGEMENT SERVICES**

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**Mike Sheaffer  
Government/Fleet Sales Account  
Manager**

**Tami Fillyaw  
Chief of Staff**

6/11/2021 | 8:42 AM EDT

6/21/2021 | 8:43 AM EDT

**Date:**

**Date:**

**ATTACHMENT 1**  
**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](mailto: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](mailto: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.

## **Attachment 2 Scope of Work**

### **1. Purpose**

To provide Customers with Construction and Industrial Equipment on a statewide basis, pursuant to the terms set forth in this Scope of Work.

### **2. Definitions**

All definitions apply in both their singular and plural context.

**Accessory** – A part or object used for convenience, attractiveness, safety, etc. to improve Base Equipment capability which meet the requirements, specifications, terms, and conditions herein, and may be installed to, uninstalled from, or provided with or separately from the Base Equipment by the Manufacturer or Dealer, as is specified, ordered, legal, customary, reasonable, and prudent in the industry.

**Base Equipment** – A Manufacturer's base Construction and Industrial Equipment without the inclusion of OEM or Non-OEM Options, Parts, Accessories, and Implements. Base Equipment may be identified by a combination of the Manufacturer's name, trade name, brand name, make name, model name, model number, or catalog number.

**Business Day** – Monday through Friday, inclusive, except for those holidays specified in section 110.117, F.S., from 8:00 a.m. to 5:00 p.m. at the Customer's location.

**Commodity** – As defined in section 287.012, F.S. Commodities may include Base Equipment; OEM and Non-OEM Options, Parts, Accessories, and Implements; and other products available through this Contract. Commodities may also be referred to throughout as "Construction and Industrial Equipment."

**Commodity Code** – The State's numeric code for classifying commodities and contractual services which meet specific requirements, specifications, terms, and conditions herein. Florida has adopted the United Nations Standard Products and Services Code (UNSPSC) for classifying commodities and services.

**Confidential Information** – Information that is trade secret or otherwise confidential or exempt from disclosure under Florida or federal law.

**Contract** – The written agreement between the Department and the Contractor. A Contractor can be a Manufacturer or a Dealer.

**Contract Manager** – The representative designated by the Department who will oversee all aspects of the Contract, monitor performance expectations, and serve as the primary point of contact for the Contractor.

**Contractor** – A Vendor that enters a Contract with the Department.

**Customer** – A State agency or Eligible User.

**Dealer** – A Manufacturer’s certified representative authorized by the Manufacturer to market, sell, provide, and service the Commodities and services of the Manufacturer responsive to the Contract. Dealers may be Contractor owned and controlled in whole or in part or independently owned and controlled.

**Department** – The Department of Management Services, a State agency.

**Eligible User** – As defined in Rule 60A-1.001(2), F.A.C.

**Group** – A series of Commodities with applicable Commodity Codes which are described in the Description of Scope section in the Scope of Work.

**Implement** – A tool, utensil, or other piece of equipment, especially as used for a particular purpose or to improve Base Equipment capability which meet the requirements, specifications, terms, and conditions herein, and may be installed to, uninstalled from, or provided with or separately from the Base Equipment by the Manufacturer or Dealer, as is specified, ordered, legal, customary, reasonable, and prudent in the industry.

**Manufacturer** – The producer or provider of Construction and Industrial Equipment which possess the minimum quality, reliability, service, and value required by the Department and Customers. May be used interchangeably with Brand Name.

**Manufacturer’s Suggested Retail Price (MSRP)** – The MSRP represents the Manufacturer’s recommended retail selling price, list price, published price, or other usual and customary price that would be paid by the purchaser for specific Commodities without benefit of a Contract resulting from this solicitation. It must be publicly listed, available, and verifiable by the Department.

**MSRP Credit** – The MSRP price of OEM and Non-OEM Options, Parts, Accessories or Implements that are deducted from the Base Equipment price paid by the Customer if removed from the Base Equipment.

**MSRP List** – The Manufacturer’s Suggested Retail Price List, a collection of MSRPs and related information broken down by specific Commodities. In the priority listed below, only the following are acceptable sources of current MSRPs and MSRP Lists for use under the resulting Contract:

- Manufacturer’s Annual U.S. Price Book; and
- Manufacturer’s official website or dealer software.

**Net Price** – The final price paid by the Customer after applying all MSRP discounts and MSRP Credits. Net Price for Base Equipment, OEM and Non-OEM Option(s), Part(s), Accessory(ies), and Implement(s) and their respective features, equipment, and components shall include all charges. Packing, handling, freight, distribution, and delivery shall be included at no additional charge to the Customer.

**Non-OEM** – Produced by a manufacturer or party other than the OEM.

**Option** – Options requested by the Customer specifically for the Construction and Industrial Base Equipment which meet the requirements, specifications, terms, and conditions herein, and may be installed to, uninstalled from, or provided with or separately from the Base Equipment by

the Manufacturer or Dealer, as is specified, ordered, legal, customary, reasonable, and prudent in the industry.

**Original Equipment Manufacturer (OEM)** – The original Manufacturer of a Commodity.

**Part** – Repair or service parts for Base Equipment which meet the requirements, specifications, terms, and conditions herein, and may be installed to, uninstalled from, or provided with or separately from the Base Equipment by the Manufacturer or Dealer, as is specified, ordered, legal, customary, reasonable, and prudent in the industry.

**State** – The State of Florida.

### 3. Scope of Work

#### 3.1 Description of Scope

The Commodities (including Base Equipment; OEM and Non-OEM Options, Parts, Accessories, and Implements; and other products available through this Contract) shall be classified under the following Groups:

Group	Group Description
Group 1	EXCAVATORS: MINI/COMPACT TRACK EXCAVATORS (LESS THAN 70 HP)
Group 2	EXCAVATORS: TRACK EXCAVATORS (EQUAL TO OR GREATER THAN 70 HP)
Group 3	EXCAVATORS: WHEEL AND TRUCK MOUNT
Group 4	MOTOR GRADERS AND MAINTAINERS
Group 5	COMPACTORS/ROLLERS: ASPHALT, SOIL, AND LANDFILL
Group 6	DOZERS: CRAWLER
Group 7	DOZERS: WHEEL
Group 8	COMPACT TRACK AND MULTI TERRAIN LOADERS (LESS THAN 15,000 LBS. OPERATING WEIGHT)
Group 9	CRAWLER/TRACK LOADERS (GREATER THAN 15,000 OPERATING WEIGHT)
Group 10	WHEEL LOADERS
Group 11	SKID STEER LOADERS: WHEEL
Group 12	BACKHOE LOADERS: WHEEL
Group 13	INDUSTRIAL TRUCKS/FORKLIFTS
Group 14	FORKLIFT/TELESCOPIC HANDLERS, RIDING TYPE (INCLUDING ROUGH TERRAIN)
Group 15	POWER GENERATORS (EXCLUDES PORTABLE)

Group 16	CONSTRUCTION EQUIPMENT: INCLUDES CONCRETE SAWS, PORTABLE CEMENT MIXERS, PORTABLE LIGHTS, OTHER (EXCLUDES HAND TOOLS AND EQUIPMENT THAT QUALIFIES FOR OTHER GROUPS)
Group 17	GOOSENECK, LOWBOY, AND HEAVY EQUIPMENT TRAILERS
Group 18	SPECIALTY TRAILERS: LANDSCAPE AND DUMP TRAILERS

The Contract is intended to cover only those Commodities generally used by the State of Florida as listed and described herein and does not include all varieties of equipment that are commercially available. The Department in its sole discretion shall determine eligibility and accessibility of all Commodities available and included under the Contract. The Contractor shall be responsible for removing all non-eligible and unacceptable Commodities under the Contract from the Contractor's MSRP List and Price Sheet.

**Delivery of non-conforming Commodities and contractual services, which are not remedied as required herein, may be cause for default proceedings or contract termination.**

### 3.2 Commodity Specifications and Standards

The Contractor shall ensure that all Commodities, including all Base Equipment, OEM and Non-OEM Options, Parts, Accessories, and Implements, and their respective features, equipment, and components, shall meet the following minimum requirements:

1. All Commodities shall be designed, constructed, equipped, assembled (except as specified in the Transportation and Delivery section in this SOW), and installed to be fully suitable for their intended use, purpose, and service. The Contractor is not required to install Parts purchased by the Customer unless specifically agreed to by the Customer and Contractor;
2. All Commodities shall be new and unused (except as specified in the Transportation and Delivery section of this SOW), for the current Manufacturer's model year or later, of current or recent production, and of the latest design and construction;
3. All Commodities shall be biodiesel (B-20), compressed natural gas ("CNG"), diesel, electric, gasoline (E-10 to E-85), liquefied petroleum gas ("LPG"), natural gas, or propane powered;
4. All Commodities shall include all OEM standard features, equipment, and components, Manufacturer or Dealer installed according to the Manufacturer's standard procedures, requirements, and specifications;
5. All Commodities shall be free of damage and/or rust which may affect appearance or serviceability;
6. All Commodities shall be professionally designed, manufactured, installed, and serviced pursuant to the industry standard of care;
7. All Commodities shall comply with required state and federal laws, including but not limited to motor vehicle, mobile equipment, safety, and environmental laws; and
8. All Commodities shall meet the requirements, specifications, terms, and conditions herein.

Contractor shall ensure that no Contractor or Dealer advertising or identification (name, logos, etc.) is on the Commodities, including Base Equipment, OEM and Non-OEM Options, Parts, Accessories, and Implements, and their respective features, equipment, and components. Manufacturer advertising or identification (name, model, logos, etc.) shall be permitted on the

respective Commodities if such advertising or identification is a Manufacturer's standard on the specific Commodity. The Department, in its sole discretion, shall determine what is Contractor or Dealer advertising or identification, what is Commodity Manufacturer's advertising or identification, and what advertising or identification is acceptable. The Contractor shall be responsible for removing, without damage, all unacceptable advertising or identification.

The Contractor may use Dealers in accordance with the terms herein to provide sales and support for the awarded Commodities offered under this Contract. In the event the Contractor elects to use Dealers, the Contractor shall remain fully accountable for ensuring that the Dealer complies with the terms of this Contract. In the event the Dealers fail to comply with the terms of this Contract, the Contractor shall remain fully liable. The Contractor shall ensure that Dealers remain current with the Contractor's authorized Commodities and MSRP List. The Contractor shall remain responsible for receiving purchase orders and shall remain responsible for invoicing the Customer for payment. All invoices shall remain in the name of the Contractor. The Contractor may not utilize Dealers until receiving express authorization from the Department. Information regarding the Contractor's addition of Dealers can be found at the following link: [https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/vendor\\_resources/subcontractor\\_dealer\\_reseller\\_forms](https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources/subcontractor_dealer_reseller_forms).

### **3.3 Federal and State Standards**

It is the intent of the Department that all specifications herein are in full and complete compliance with all federal and State of Florida laws, requirements, and regulations applicable to the type and class of Commodities being provided. This includes, but is not limited to: Federal Motor Vehicle Safety Standards ("FMVSS"), Occupational Safety and Health Administration ("OSHA"), Environmental Protection Agency ("EPA") Standards, and State of Florida laws, requirements, and regulations that apply to the type and class of Commodities being provided. In addition, the Contractor is responsible for complying with any applicable federal or State legislation that becomes effective during the term of the Contract upon the legislation's effectiveness. The Contractor shall meet or exceed any such requirements of the laws and regulations. If an apparent conflict exists, the Contractor, whether as the Manufacturer or Dealer, shall contact the DMS Contract Manager immediately.

### **3.4 Testing**

Samples of delivered Commodities may be selected at random by Customers or Department and tested for compliance with the requirements, specifications, terms, and conditions.

### **3.5 Warranty**

The Contractor shall ensure that the Manufacturer's standard warranty shall cover all Commodities of the Contract. The Manufacturer's standard warranty is required to provide coverage against defective material, workmanship, and failure to perform in accordance with the specifications and required performance criteria. The Manufacturer's standard warranty coverage shall be identical to or exceed the most inclusive of those normally provided for the Commodities specified herein that are sold to any federal, state, or local governments. The Manufacturer's standard warranty shall have a minimum term of one year from the acceptance section and shall begin only at the time of acceptance by the Customer.

Should the Manufacturer's standard warranty conflict with any requirements, specifications, terms, or conditions of the Contract, then the Contract requirements, specifications, terms, and conditions shall prevail.



### **3.6 Commodities Recall**

In the event there is a recall of any of the Commodities, any of its components, or any parts incorporating the equipment ("Recalled Equipment"), the Contractor shall provide reasonable assistance to the Department in developing a recall strategy and shall cooperate with the Department and the Customers in monitoring the recall operation and in preparing such reports as may be required. Each Contractor shall, at the request of the Department or any Customer, give the Department and each Customer all reasonable assistance in locating and recovering any equipment or Recalled Equipment. Each Contractor shall immediately notify and provide copies to the Department of any communications, whether relating to recalls or otherwise, with any Customer. The Contractor shall ensure defective Recalled Equipment are rectified, replaced and/or destroyed in compliance with all applicable laws, rules or regulations and the Department's reasonable instructions. All Contractor efforts relating to Recalled Equipment shall be at Contractor's own expense.

### **3.7 Commodity Compliance and Compatibility**

It is the Contractor's responsibility to ensure that the Commodities supplied are compliant with the Contract requirements, specifications, terms, and conditions. Additionally, the Contractor shall ensure that all Commodities ordered by the Customer are fully compatible with each other and with any associated pre-existing Commodity possessed by the Customer and disclosed to the Contractor by the Customer. The Contractor's acceptance of the Customer's order shall indicate that the Contractor agrees to deliver a Commodity that is fully compliant and compatible with the Customer's order requirements, specifications, terms, and conditions.

In the event any ordered Base Equipment, OEM and Non-OEM Option(s), Part(s), Accessory(ies), and Implement(s); and their respective features, equipment, and components are found by the Customer to be missing, incorrect, defective, damaged, non-compatible, or non-compliant, the Contractor shall, at the Customer's discretion, be required to complete one of the following at no additional cost to the Customer:

- Install or repair the Base Equipment, OEM and Non-OEM Option(s), Part(s), Accessory(ies), and Implement(s), and their respective features, equipment, and components;
- Replace the Base Equipment, OEM and Non-OEM Option(s), Part(s), Accessory(ies), and Implement(s); and their respective features, equipment, and components; or OEM Options, Parts, Accessories, and Implements Non-OEM Options, Parts, Accessories, and Implements; and
- Refund the purchase price of the Base Equipment, OEM and Non-OEM Option(s), Part(s), Accessory(ies), and Implement(s); and their respective features, equipment, and components to the Customer.

Any changes necessary after the delivery of the Customer's order that are required to bring a Commodity into compliance or compatibility due to an incorrect order fulfillment by the Contractor shall be accomplished at the Contractor's expense.

### **3.8 Commodities Title and Registration**

Construction and Industrial Equipment delivered under the Contract shall be titled and registered by the Contractor in accordance with Florida law, including Chapters 319 and 320, Florida Statutes. The Contractor shall send any necessary form(s) that shall be signed by an authorized representative of the Customer with the Commodity upon delivery, and the Contractor shall obtain any necessary signatures and complete the titling and registration process for the Customer in a timely manner.

In the event the Customer is permitted by law or policy to obtain title and registration independent of the Contractor, and chooses to obtain title and registration independent of the Contractor, the Customer will notify the Contractor in writing of this decision no later than three Business Days following receipt of the Acknowledgement of Order form. However, the Customer shall then be obligated to title and register the awarded Commodity and the Contractor shall provide any documents necessary for the Customer to do so.

Customers may elect to transfer an existing license plate or may choose to obtain a new license plate.

- Transferring an existing license plate is the standard default order type and does not require specific notation on the Purchase Order. All related fees associated with transferring an existing license plate are included in the Base Equipment Net Price
  - a) When obtaining a new license plate, the Customer should include a notation on the Customer Order and an additional amount to cover the cost of a new license plate. The Contractor is not required to obtain a new license plate for the Customer unless there is a notation and a new license plate fee is included on the Customer Order. All related fees except for the new license plate cost are included in the Base Equipment Net Price. The Customer's order notation for a new license plate shall include the request for a new license plate, the type of license plate required, and a contact person's name, title, and telephone number.
  - b) The Contractor may obtain special plates such as "State", "County", or "City" from most county tax offices, but agency plates such as "DOT", "DC", "DNR", etc. shall be obtained from the Department of Highway Safety and Motor Vehicles, Division of Motor Vehicles, in Tallahassee, Florida.

### **3.9 Transportation and Delivery**

The Net Price for Base Equipment, OEM and Non-OEM Option(s), Part(s), Accessory(ies), and Implement(s); and their respective features, equipment, and components shall include all charges. Packing, handling, freight, distribution, and delivery shall be included at no additional charge to the Customer. Transportation and Delivery shall be FOB Destination to any point statewide as follows:

1. Customers shall be notified within two Business Days when Commodities are not in stock or unavailable from the Manufacturer at the time of order. Commodities must be delivered within 180 Calendar Days after receipt of order, unless otherwise agreed to by the Customer. For any delivery not made within the 180 Calendar Day timeframe, the Department's Contract Manager must be notified and given a copy of the Customer's order. The Contractor must provide the Department's Contract Manager any requested information and timeframe for completion of the order.
2. Commodities in stock must be delivered within 14 Calendar Days after receipt of order or the receipt of the Commodities from the Manufacturer, with one exception – Commodities requiring post-Manufacturer or Dealer installed OEM or Non-OEM Options, Parts, Accessories, and Implements shall be delivered within 30 Calendar Days after receipt of the Commodities from the Manufacturer(s).

Delivery of the Commodity is defined as receipt of the Commodity at the Customer's designated location. Delivery does not constitute the Customer's acceptance. See section 3.12, Acceptance, in this SOW. The Contractor shall give the ordering Customer a minimum of one Business Day notice prior to delivery. Commodities shall be delivered as determined by the Customer.

The Contractor shall deliver Commodities by either private or common carrier transport. Where deliveries may be accomplished by driving the self-propelled, street-legal, Commodity a maximum of three road miles, the self-propelled Commodity may be driven to the delivery location at Contractor's sole risk and expense. The Contractor shall comply with the Manufacturer's break-in requirements and all applicable traffic laws.

All self-propelled operator occupied Commodities delivered by the Contractor to the Customer shall contain no less than one-quarter (1/4) tank of fuel as indicated by the fuel gauge at the time of delivery. At the Customer's option, Commodities with less than one-quarter (1/4) tank of fuel at delivery may be rejected or \$3.00 per gallon or gallon equivalent up to one-quarter of the Commodity's fuel tank capacity may be deducted from the invoice and payment.

The Contractor shall perform the standard Manufacturer's pre-delivery inspection and is responsible for delivering a Commodity that is properly serviced, clean, and in first class operating condition. The Contractor is required to perform the following, at a minimum, as part of its pre-delivery service:

1. Completely lubricate operating chassis, engine, and mechanisms with Manufacturer's recommended grades of lubricants;
2. Check and fill all fluid levels to ensure proper fill;
3. Adjust engine(s) to proper operating condition(s);
4. Inflate tires to proper pressure;
5. Ensure proper operation of all accessories, gauges, lights, and mechanical and hydraulic features;
6. Clean equipment, if necessary, and remove all unnecessary and prohibited tags, stickers, papers, etc.;
7. Ensure that the awarded Commodity is completely assembled (unless otherwise noted in the following sub-section) including Base Equipment, OEM and Non-OEM Option(s), Part(s), Accessory(ies), and Implement(s); and their respective features, equipment, and components and OEM Options, Parts, Accessories, and Implements, are thoroughly tested and ready for immediate operation upon delivery; and
8. Where applicable, ensure that the product is packaged in a manner which ensures safe delivery to the destination. Packaging shall comply with all federal, state, and local laws including but not limited to the requirements of section 403.7191, Florida Statutes. The Contractor shall mark each package to include the name of the Contractor, the State Term Contract number, the purchase or Customer Order number, and a brief description of the contents.

The Contractor shall deliver all Commodities with each of the following completed documents:

1. Copy of the Manufacturer's pre-delivery inspection form, which meets or exceeds the requirement herein;
2. Copy of the ordering Customer's Purchase Order;
3. Copy of the applicable Manufacturer specification(s);
4. Copy of the Manufacturer's invoice(s) (prices may be deleted or obscured) for each Commodity, including individual Base Equipment, OEM and Non-OEM Option(s), Part(s), Accessory(ies), and Implement(s); and their respective features, equipment, and components and OEM Options, Parts, Accessories, and Implements in the shipment;
5. Manufacturer's Window Sticker(s), if applicable;
6. Manufacturer's Certificate of Origin, if applicable;
7. Manufacturer's Operator Manual, and (if not included in the operator manual) one each of the Manufacturer's lubrication and maintenance instructions;

8. Copy of the Manufacturer's Standard Warranty Certifications;
9. Sales Tax Exemption Form, if applicable;
10. Temporary Tag and twenty day Extension Tag, if applicable; and
11. DHSMV82040, Application for Certificate of Title and/or Vehicle Registration, if applicable.

Deliveries that do not include the above applicable forms and documents, or that have forms that have been altered, or are not properly completed, may be refused. Repeated failures by the Contractor to include the above properly completed forms and publications, or that have submitted altered forms, to the ordering Customers may be cause for default proceedings and/or Contract termination.

These Transportation and Delivery requirements, terms, and conditions also apply to the re-delivery of a Commodity that was previously rejected upon initial delivery.

### **3.10 Price Quote Form**

For all Customer requests the Contractor shall complete and submit an Attachment 3, Price Quote Form (PQF), to the Customer for the requested Commodities. For all Commodities quoted on the PQF, the MSRP Listing must also be provided to the Customer. All Commodities shall be itemized on the PQF and include applicable brand, model, and pricing information. The price quoted for Commodities shall not exceed the current Contract's Net Price to Customers. The PQF shall be completed by the Contractor and returned to the Customer within two Business Days of the Contractor's receipt of the Customer's request for a quote. Customers are encouraged to seek more than one quote from the identified awarded Contractors, where available. Customers may negotiate with the Contractor to establish a lower price through a greater discount percentage off MSRP.

### **3.11 Acknowledgement of Order Form**

For each order, the Contractor shall provide the ordering Customer with a fully completed Attachment 4, Acknowledgement of Order Form, within five Business Days of receiving the Customer's Order. The Contractor must use the Acknowledgment of Order Form and must not make any alterations. Failure to timely provide the Customer with the Acknowledgement of Order Form shall be deemed acceptance of the Order, which, if necessary, shall require the Contractor to provide the newest model of the Commodity which meets the prices, discounts, requirements, specifications, terms, and conditions herein.

When the Contractor receives an order and does not have the ordered Commodities in stock and cannot deliver the Commodities to the Customer within fourteen calendar days, the Contractor shall notify the ordering Customer on the Acknowledgement of Order Form. When providing the Acknowledgment of Order Form the Contractor shall provide the Customer with the Manufacturer's order confirmation information and estimated delivery date.

Submission of the Acknowledgement of Order Form is the responsibility of the Contractor without prompting or notification by the Contract Manager or Customer. Repeated failures by the Contractor to timely submit completed Acknowledgement of Order Forms to the ordering Customers may be cause for default proceedings and Contract termination.

### **3.12 Acceptance**

The Customer, within three Business Days of delivery, will inspect the Commodity received for acceptability. The Customer should compare the physical Commodity delivered; Contract prices, discounts, requirements, specifications, terms, and conditions; Customer order; and

Manufacturer's Window Sticker/Manufacturer's Invoice(s) to ensure the Commodity received meets or exceeds the requirements, specifications, terms, and conditions of the Contract and Customer order. Additionally, the Customer should inspect the Commodity for any damage. The Contractor is obligated to correct any errors or damage. Failure by the Customer to discover an error or damage in the Commodity shall not relieve the Contractor from their obligation to correct the error or damage in the event it is found any time after the Commodity is delivered.

The Parties agree that inspection and acceptance shall be the Customer's responsibility and occur at the location of the Customer. Title and risk of loss or damage to all Commodities shall be the responsibility of the Contractor until accepted by the Customer. The Contractor shall be responsible for filing, processing, and collecting all damage claims. The Customer shall assist the Contractor by:

- Recording any evidence of visible damage on all copies of the delivering carrier's bill of lading;
- Reporting any known visible and concealed damage to the carrier and the Contractor;
- Confirming said reports in writing within fifteen Business Days of delivery, requesting that the carrier inspect the damaged merchandise; and
- Providing the Contractor with a copy of the carrier's bill of lading and damage inspection report.

Transportation and Delivery of the Commodity does not constitute acceptance for the purpose of payment. Acceptance and authorization of payment shall be given by the Customer only after a thorough inspection indicates that the Commodity is undamaged and meets the Contract requirements, specifications, terms, and conditions. Should the delivered Commodity be damaged or differ in any respect from the Contract requirements, specifications, terms, and conditions, payment shall be withheld until such time as the Contractor completes the required, Customer-approved, corrective action.

Should the Commodity require service or adjustments as part of the Customer-approved corrective action(s), the Contractor shall either remedy the defect or be responsible for reimbursing the Manufacturer's local service Dealer or others selected by the Customer to remedy the defect. The Contractor shall initiate such required service or adjustments within two Business Days following notification by the Customer. The Commodity shall not be accepted until all service or adjustments are satisfactory and the Commodity is re-delivered in acceptable condition. The costs of any transportation and delivery required as part of the initial or any re-deliveries due to error or damage are the responsibility of the Contractor.

The Customer shall notify the Department of any Contract deviation that it cannot resolve with the Contractor. The Department and Customer shall develop a corrective action plan related to the Contract deviation, which may include the Customer's permanent refusal to accept the Commodity, in which case the Commodity shall remain the property of the Contractor, and the Customer and the State shall not be liable for payment for any portion thereof.

### **3.13 Installation**

When installation is required, the Contractor shall be responsible for placing and installing the Commodities or parts in the required locations at no additional charge. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the Commodity or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, tools, rigging, labor, and materials required to install or replace the Commodities or parts in the proper location. Contractor shall protect the site from

damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

### **3.14 Full-Service Repair Facilities**

The Contractor agrees to maintain at least one factory-authorized service station or servicing Dealer within the State of Florida to perform warranty repairs and adjustments throughout the Contract term. The Contractor shall promptly notify the Department of any changes thereto. The Contractor shall be responsible for all service performed, regardless of whether the Contractor or its approved Dealer actually performed the service. Notwithstanding the foregoing, the Contractor may offer Customers "after warranty" service agreements for the maintenance and repair of goods after the initial warranty expires. The Contractor shall list this additional service as a separate item on the invoice.

### **3.15 Holidays**

The Contractor shall provide Customers all Commodities during Business Days. The following days are observed as holidays by state agencies in accordance with section 110.117, F.S.:

- New Year's Day
- Birthday of Martin Luther King, Jr., third Monday in January
- Memorial Day
- Independence Day
- Labor Day
- Veterans' Day, November 11
- Thanksgiving Day
- Friday after Thanksgiving
- Christmas Day

If any of these holidays falls on Saturday, the preceding Friday shall be observed as a holiday. If any of these holidays falls on Sunday, the following Monday shall be observed as a holiday. Customers may have additional holiday(s) observed specifically by the Customer, which will be detailed in the Customer's order.

### **3.16 Purchasing Card**

The State has implemented a purchasing card (P-Card). The Contractor may receive payments via the State's P-Card. P-Card acceptance for purchase is a mandatory requirement for the Contract but is not the exclusive method of payment. If the State changes its P-Card platform during the term of Contract, the Contractor shall make all necessary changes to accept payment via the State's new P-Card platform within 30 calendar days of notification of such change.

### **3.17 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.

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

### **3.18 Contract Reporting**

The Contractor shall report information on orders received from Customers associated with this Contract. No price increases will be considered for any Contractor who has outstanding reports, or any other documentation required under this Contract. The Contractor shall submit reports in accordance with the following schedule:

<b>Report</b>	<b>Period Covered</b>	<b>Due Date</b>
MFMP Transaction Fee Report	Calendar month	15 calendar days after the end of each month
Quarterly Sales Report	State’s Fiscal Quarter	30 calendar days after close of the period

Diversity Report (submitted to the Customer)	State Fiscal Year	30 Business Days after close of the period
Preferred Pricing Affidavit (in accordance with the Preferred Pricing section of the Special Contract Conditions)	Annual	Contract Anniversary Date

### 3.19 MFMP Transaction Fee Report

The Contractor is required to submit monthly MFMP Transaction Fee Reports in the Department's electronic format. Reports are due 15 calendar days after the end of the reporting period. For information on how to submit Transaction Fee Reports online, please reference the detailed fee reporting instructions and vendor training presentations available online at the "Transaction Fee & Reporting" section and "Training for Vendors" subsections under the "Vendors" tab on the MFMP website. Assistance with Transaction Fee Reporting is also available from the MFMP Customer Service Desk by email at: [VendorHelp@myfloridamarketplace.com](mailto:VendorHelp@myfloridamarketplace.com) or telephone 866-FLA-EPRO (866-352-3776) from 8:00 a.m. to 6:00 p.m. Eastern Time.

### 3.20 Quarterly Sales Reports

The Contractor shall submit a quarterly sales report electronically, in the required format, to the Department's Contract Manager within thirty (30) calendar days after close of each quarter. The quarterly sales report can be found here: [https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/vendor\\_resources/quarterly\\_sales\\_report\\_format](https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources/quarterly_sales_report_format). Failure to provide the quarterly sales report, or other reports requested by the Department, will result in the imposition of financial consequences and may result in the Contractor being found in default and the termination of the Contract. Initiation and submission of the quarterly sales report are the responsibility of the Contractor without prompting or notification by the Department. Sales will be reviewed on a quarterly basis. If no sales are recorded during the period, the Contractor must submit a report stating that there was no activity. If no sales are recorded in two consecutive quarters, the Contractor may be placed in probationary status or the Department may terminate the Contract.

Quarter 1 – (July-September) – due 30 calendar days after the close of the period.

Quarter 2 – (October-December) – due 30 calendar days after the close of the period.

Quarter 3 – (January-March) – due 30 calendar days after the close of the period.

Quarter 4 – (April-June) – due 30 calendar days after the close of the period.

### 3.21 Diversity Report

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

### 3.22 Ad Hoc Reports

The Department or Customer may require additional Contract information such as copies of purchase orders or ad hoc sales reports. The Contractor shall submit information in response to these specific ad hoc requests for reports within the specified amount of time as requested by the Department or Customer.



### 3.23 Business Review Meetings

To maintain the relationship between the Department and the Contractor, each quarter the Department may request a business review meeting. The business review meeting may include, but is not limited to, the following:

- Successful completion of deliverables;
- Review of the Contractor's performance;
- Review of minimum required reports;
- Addressing of any elevated Customer issues; and
- Review of continuous improvement ideas that may help lower total costs and/or improve business efficiencies.

### 3.24 Financial Consequences

Financial Consequences will be assessed for failure to timely perform or submit a report as required by the Contract and shall be paid via check or money order in US Dollars, and made out to the Department of Management Services or the specific Customer, where applicable. Financial Consequences will be assessed daily or per occurrence for each individual failure until the performance or submittal is accomplished to the Department's or Customer's satisfaction, unless stated otherwise. For the submissions of reports, financial consequences will apply to each target period beginning with the first full month or quarter of the Contract's performance and each month and quarter thereafter.

Deliverable	Performance Metric	Performance Due Date	Financial Consequence for Non-Performance
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 <sup>th</sup> calendar day after the close of each State fiscal quarter	\$250 per Calendar Day late and not received by the Contract Manager
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 <sup>th</sup> calendar day after the close of each month	\$100 per Calendar Day late and not received by the Contract Manager
Contractor will provide accurate Price Quote Forms to Customers	All Price Quote Forms will be provided to Customers with accurate information	Upon Customer request	\$25 per order
Contractor will complete the Acknowledgement of Order Form for each order	All Acknowledgement of Order Forms will be provided to Customers	Within 5 business days of receiving the Customer's order	\$50 per occurrence

**The Department and Customers reserve the right to, in addition to withholding payment, implementing other appropriate remedies, such as Contract termination or non-renewal.**

### **3.25 MSRP List and Product Adjustments**

The Contractor shall submit a complete MSRP List that includes all Commodities (i.e. Base Equipment; OEM Options, Parts, Accessories, and Implements; and Non-OEM Options, Parts, Accessories, and Implements) for each Manufacturer/ Brand Name and Group for which the Contractor received an award; the Commodities listed on the MSRP must match the Commodities listed on the Price Sheet. The MSRP List is subject to the Department's approval. The MSRP List shall include the following for each Commodity: The Manufacturer/Brand Model Number, the Manufacturer/Brand Item Description, and the MSRP. The Contractor shall include a cover page, which shall provide the applicable Group, Manufacturer/Brand Name, MSRP List Name, and MSRP List date. The Department shall be the final arbiter of MSRPs if an MSRP on the Contractor's MSRP List differs from the published MSRP. The Contractor shall be responsible for removing all non-eligible and unacceptable Commodities under the Contract from the Contractor's MSRP List.

The Contractor may add products to the MSRP List at any time during the life of the Contract by submitting a complete and revised MSRP List. Products added must be from a Manufacturer/Brand Name for which the Contractor received an award and fall within the scope of a Group for which the Contractor received an award. The Contractor may delete products from the MSRP List by providing a justification to the Department with approval from the Department. Any product deletions require the Contractor to submit a complete and revised MSRP List. The Contractor shall immediately notify the Department in writing if the Contractor is unable to provide the awarded Manufacturer/Brand. The Contractor shall be responsible for removing all non-eligible and unacceptable Commodities under the Contract from the Contractor's MSRP List.

The Contractor may update existing product's MSRPs on the MSRP List to match the MSRPs published by the Manufacturer no earlier than twelve (12) months after the start date of the Contract and, thereafter, or no earlier than twelve (12) months after the date of the previous MSRP update. The Contractor may update the existing product's MSRPs on the MSRP List by submitting a complete and revised MSRP List for Department review and approval.

Revised MSRP Lists, regardless of whether the Contractor is adding products or updating existing product's MSRPs, must be accompanied by a revised Price Sheet, as described in the Price Sheet and Price Adjustments section of the Scope of Work, as well as a list of all changes made from the previously submitted version of the MSRP List.

### **3.26 Price Sheet and Price Adjustments**

The Contractor shall submit a complete price sheet to include all Base Equipment and OEM Options, Parts, Accessories, and Implements for each Manufacturer/Brand and Group for which the Contractor received an award. The Commodities listed on the price sheet must match the Commodities listed on the MSRP List. The price sheet is subject to the Department's approval. The price sheet shall be provided in Excel format and include a separate tab for each Group. Each tab shall include, at minimum, the following information for each Commodity offered under that Group:

- Brand/Manufacturer Name (as shown on the Product Group Discount Sheet);
- Commodity Type (i.e. Base Equipment; OEM Option, Part, Accessory, or Implement);
- Model number or other identifier that Customers can use to locate the Commodity on the Manufacturer's website;

- Model number(s) of Base Equipment for and associated with the OEM Option, Part, Accessory, or Implement;
- Description;
- MSRP (as shown on the current MSRP List);
- Discount (as shown on the Product Group Discount Sheet for the Commodity type); and
- Net Price to the Customer.

The Contractor may add products to the price sheet at any time during the life of the Contract by submitting a complete and revised price sheet. Products added must be from a Manufacturer/ Brand Name for which the Contractor received an award and fall within the scope of a Group for which the Contractor received an award. The Contractor may delete products from the price sheet by providing a justification to the Department with approval from the Department. Any product deletions require the Contractor to submit a complete and revised price sheet. The Contractor shall immediately notify the Department in writing if the Contractor is unable to provide the awarded Manufacturer/Brand. The Contractor shall be responsible for removing all non-eligible and unacceptable Commodities under the Contract from the Contractor's price sheet.

The Contractor may update existing product's MSRPs and Net Prices to the Customer on the price sheet to match the MSRPs published by the Manufacturer no earlier than twelve (12) months after the start date of the Contract and, thereafter, or no earlier than twelve (12) months after the date of the previous MSRP update. The Contractor may update existing product's MSRPs and Net Prices to the Customer on the price sheet by submitting a complete and revised price sheet for the Department's review and approval. Price adjustments should be submitted to the Contract Manager during the months of January or July.

Revised price sheets, regardless of whether the Contractor is adding products or updating existing product's MSRPs and Net Prices to the Customer, must be accompanied by a revised MSRP List, as described in the MSRP List and Product Adjustments section, as well as a list of all changes made from the previously submitted version of the price sheet.

### **3.27 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. By executing this Contract, the Contractor certifies that it is registered with, and uses, the E-Verify system for all newly hired employees. 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. In order to implement this provision, the Vendor shall provide a copy of its DHS Memorandum of Understanding (MOU) to the 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 reserves the right to order the immediate termination of any Contract between the Contractor and a subcontractor performing work on its behalf should the Department develop a good faith belief that the subcontractor has knowingly violated section 448.095(1), F.S.



## Attachment 4 Acknowledgement of Order Form

**ORDERING CUSTOMER:**

**CONTACT PERSON:**

**ADDRESS:**

**CITY:**     **STATE:** FL    **ZIP:**

**ORDER CONFIRMATION NOTIFICATION:**

Purchase Order Number  was received from the Customer on .

In accordance with State of Florida State Term Contract Number 22100000-21-STC, Construction and Industrial Equipment, the Acknowledgement of Order Form section in the Scope of Work, the order was placed with the Manufacturer on  and assigned the following Manufacturer's Production Number(s): .

We anticipate Delivery to your Delivery Location on or about .

*For any correspondence, please reference your Purchase Order Number or the Production Number(s).*

**CONTRACTOR:**

**ADDRESS:**

**CITY:**     **STATE:** FL    **ZIP:**

**SIGNATURE:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**ADDITIONAL COMMENTS (IF ANY):**

**Note to Contractor:** This form must be accurately and completely completed with specific information, numbers, dates, signature, etc. Adjustments to the form or alternate forms are not acceptable. Submission of the Acknowledgement of Order Form is to be the responsibility of the Contractor without prompting or notification by the Contract Manager or Customer. Repeated failures by the Contractor to submit completed Acknowledgement of Order Forms to the ordering Customers may be cause for default proceedings and Contract termination.