

Recap of changes to standard General Conditions for Quotation No. X2112657Q1

The following changes were reviewed by the Office of the County Attorney and were accepted by the Port Everglades. The standard clause is listed with the modified approved clause, with the changes in bold.

Broward County Standard Terms and Conditions	Negotiated Terms and Conditions
<p>Item 6.d Taxes: Broward County is exempt from Federal Excise and Florida Sales taxes on direct purchase of tangible property. Exemption numbers appear on purchase order. The Vendor shall pay all applicable sales, consumer, land use, or other similar taxes required by law. The Vendor is responsible for reviewing the pertinent State Statutes involving the sales tax and complying with all requirements.</p>	<p>Taxes: County represents to Vendor that County is exempt from otherwise applicable state and local sales, use, excise or other taxes relating to the Equipment or Maintenance Services to be provided by Vendor.</p>
<p>Item 12.(a), Termination for Availability of Funds: If the term of this contract extends beyond a single fiscal year of the County, the continuation of this contract beyond the end of any fiscal year shall be subject to the availability of funds from the County in accordance with Chapter 129, Florida Statutes (Florida Statutes). The Broward County Board of County Commissioners shall be the final authority as to availability of funds and how such available funds are to be allotted and expended. In the event funds for this project/purchase are not made available or otherwise allocated, the County may terminate this contract upon thirty (30) days prior written notice to the Vendor.</p>	<p>Availability of Funds: If the term of this contract extends beyond a single fiscal year of the County, the continuation of this contract beyond the end of any fiscal year shall be subject to the availability of funds from the County in accordance with Chapter 129, Florida Statutes (Florida Statutes). The Broward County Board of County Commissioners shall be the final authority as to availability of funds and how such available funds are to be allotted and expended. In the event funds for this project/purchase are not made available or otherwise allocated, the County may terminate this contract for convenience subject to the provisions of 12 (c) below (Termination for Convenience) upon thirty (30) calendar days prior written notice to the Vendor.</p>
<p>Item 12.(b), Termination for Non-Performance: The Awarding Authority may terminate the contract for cause if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. Cause for termination shall include, but not be limited to, failure to suitably perform the work, failure to suitably deliver goods in accordance with the specifications and instructions in this solicitation, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of the County as set forth in this solicitation, or multiple breach of the provisions of this solicitation notwithstanding whether any such breach was previously waived or cured.</p>	<p>Non Performance: The Awarding Authority may terminate the contract for cause if a party is in material breach and has not corrected the breach or is not diligently pursuing cure within fourteen (14) calendar days after written notice from the aggrieved party identifying the breach. Cause for termination shall include, but not be limited to, failure to substantially perform the work, failure to substantially deliver goods in accordance with the specifications and instructions in this solicitation, or failure to diligently perform the work in a manner calculated to meet or accomplish the objectives of the County as set forth in this solicitation, or multiple material breaches of the provisions of this solicitation notwithstanding whether any such breach was previously waived or cured.</p>
<p>Item 12.C, Termination for Convenience: The Awarding Authority may terminate the contract for convenience upon no less than thirty (30) days written notice. In the event the contract is terminated for convenience, Vendor shall be paid for any goods properly delivered and services properly performed to the date the contract is terminated; however, upon being notified of County's election to terminate, Vendor shall cease any deliveries, shipment or carriage of goods, and refrain from performing further services or incurring additional expenses under the terms of the contract. In no event will payment be made for lost or future profits. Vendor acknowledges and agrees that is has received good, valuable and sufficient consideration from County, the receipt and adequacy of which are hereby acknowledged for County's right to terminate this contract for convenience.</p>	<p>For Convenience: The Awarding Authority may terminate the contract for convenience upon no less than thirty (30) calendar days written notice. In the event the contract is terminated for convenience, Vendor shall be paid for any goods properly delivered, lease fees incurred and services properly performed to the date the contract is terminated, plus expenses reasonably incurred by Vendor in connection with the termination; however, upon being notified of County's election to terminate, Vendor shall cease any deliveries, shipment or carriage of goods, and refrain from performing further services or incurring additional expenses under the terms of the contract. In no event will payment be made for lost or future profits. Vendor acknowledges and agrees that is has received good, valuable and sufficient consideration from County, the receipt and adequacy of which are</p>

	<p>hereby acknowledged for County's right to terminate this contract for convenience.</p>
<p>Item No. 15, Non-Conformance to Contract Conditions: The County may withhold acceptance of, or reject any items which are found, upon examination, not to meet the specification requirements. Upon written notification (mail, email, or fax) of rejection, items shall be removed within five (5) calendar days by the Vendor at its expense and redelivered at its expense. The County regards rejected goods left longer than thirty (30) days as abandoned and the County has the right to dispose of them as its own property. On foodstuffs and drugs, no written notice of rejection need be given. Upon verbal notice to do so, the Vendor shall immediately remove and replace such rejected merchandise at its expense. Rejection for non-conformance, failure to provide services conforming to specifications, or failure to meet delivery schedules may result in Vendor being found in default.</p>	<p>The County may withhold acceptance of, or reject any items within 21 calendar days of arrival at site which are found, upon examination, to be damaged in transit or visibly does not meet the specification requirements in quantity or type. Upon written notification (mail, email, or fax) of rejection, items shall be removed within seven (7) calendar days by the Vendor at its expense and redelivered at its expense or repaired on-site at Vendor's expense to conform to the specification requirements at the prior approval of the County. The County regards rejected goods left longer than thirty (30) calendar days as abandoned and the County has the right to dispose of them as its own property. Rejection for nonconformance, failure to provide services conforming to specifications, or failure to meet delivery schedules may result in this contract being terminated pursuant to Section 12.b.</p>
<p>Item No. 19, Indemnification: Replaced with modified version of ARTICLE 10. INDEMNIFICATION AND LIMITATION OF LIABILITY taken from Broward County's standard agreement for software as a service: Indemnification. Provider shall be fully liable for the actions of its current and former officers, employees, subcontractors and other agents under this Agreement. Provider shall at all times hereafter indemnify, hold harmless and defend County and all of County's current and former officers, employees and other agents (collectively, "Indemnified Party") from and against any and all lawsuits, causes of action, demands, claims, losses, fines, penalties, damages, judgments, liabilities and expenditures of any kind, including attorneys' fees, litigation expenses, and court costs (collectively, "Claim"), raised or asserted by any person or entity that is not a party to this Agreement, which Claim is caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of Provider or any current or former officer, employee, subcontractor, or other agent of Provider, arising from, relating to, or in connection with any obligation or performance under this Agreement. In the event any Claim is brought against an indemnified Party, Provider shall, upon written notice from County, defend each Indemnified Party against each such Claim through counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the County Attorney, in his or her reasonable discretion, any sums due Provider under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been resolved. Any sums so withheld shall not be subject to the payment of interest by County. Limitation of Liability. Neither Provider nor County shall be liable to the other party for any damages under this</p>	<p>Indemnification: Vendor shall be fully liable for the actions of its officers, employees, and subcontractors under this Agreement. Vendor shall at all times hereafter indemnify, hold harmless and defend County and all of County's officers and employees (collectively, "Indemnified Party") from and against any and all lawsuits, causes of action, demands, claims, losses, fines, penalties, damages, judgments, liabilities, and expenditures, of any kind, including reasonable attorneys' fees, litigation expenses, and court costs (collectively, "Claim") raised or asserted by any person or entity that is not a party to this Agreement on account of bodily injury, death, or damage to tangible property, which Claim, to the extent attributable to intentional reckless, or negligent act or omission of Vendor or any officer, employee, or subcontractor, is caused or alleged to be caused, in whole or in part, by Vendor or any officer, employee, or subcontractor arising from or relating to its performance under this Agreement. In the event any Claim is brought against an Indemnified Party, Vendor shall, upon written notice from County, defend each Indemnified Party against each such Claim. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. Limitation of Liability. Neither Vendor nor County shall be liable to the other party for any damages under this Agreement that exceed the largest of the following amounts: (a) \$100,000 per claim or incident; or (b) \$1,000,000 in the annual aggregate. Neither party shall be liable for the other party's special, indirect, incidental, punitive, or consequential damages (including damages resulting from lost data or records, other than costs incurred in the recovery thereof even if the party has been advised that such damages are possible, or for the other party's lost profits, lost revenue, interruption of business, cost of capital, or lost institutional operating savings. These limitations of liability shall not apply to (i) any Claim resulting from Vendor's actual or alleged disclosure of County Confidential Information or resulting</p>

<p>Agreement that exceed the largest of the following amounts: (a)\$100,000; (b) twice the maximum compensation amount specified in Section 5.1; or (c) the amount of insurance Provider is required to provide under Article 11.</p> <p>Neither party shall be liable for the other party's special, indirect, punitive, or consequential damages (including damages resulting from lost data or records other than costs incurred in the recovery thereof), even if the party has been advised that such damages are possible, or for the other party's lost profits, lost revenue, or lost institutional operating savings. These limitations of liability shall not apply to(i) any Claim resulting from Provider's actual or alleged disclosure of County Confidential information or resulting from an actual or alleged data breach in violation of applicable law,(ii) any Claim resulting from an actual or alleged infringement of any interest in any Licensed Technology, the System, or other intellectual property, or (iii) any indemnification obligation under this Agreement.</p>	<p>from an actual or alleged data breach in violation of applicable law, (ii) any Claim resulting from an actual or alleged infringement of any interest in any intellectual property, or (iii) any indemnification obligation in Section 19 under this Agreement ("Excluded Claims"). All Vendor liability shall end upon expiration of the applicable statute of limitations, provided that the County may continue to enforce a claim for which it has given notice prior to that date. Vendor shall not be liable for advice or assistance that is not required for the work scope under this Agreement. For purposes of this Sections 19 and 20, the term "Vendor" means Vendor, its affiliates, subcontractors and suppliers of any tier, and their respective employees. The limitations in this Section 20 shall apply to all claims other than Excluded Claims regardless of whether a claim is based in contract, warranty, tort/extra-contractual liability (including negligence), strict liability or otherwise, and shall prevail over any conflicting terms, except to the extent that such terms further restrict Vendor's liability. The remedies of each party set forth in this Agreement are exclusive and are its/their sole remedies for any failure of the other party to comply with its/their obligations hereunder.</p>
<p>Item No. 23: Assignment, Subcontract: Contractor shall not transfer, convey, pledge, subcontract or assign the performance required by this solicitation without the prior written consent of the Director of Purchasing. Any award issued pursuant to this solicitation and the monies which may become due hereunder are not assignable, transferrable, or otherwise disposable except with the prior written consent of the Director of Purchasing.</p>	<p>Assignment, Subcontract: Except for TMEIC International Corp., Vendor shall not transfer, convey, pledge, subcontract or assign the performance required by this solicitation without the prior written consent of the Director of Purchasing. Any award issued pursuant to this solicitation and the monies which may become due hereunder are not assignable, transferrable, or otherwise disposable except with the prior written consent of the Director of Purchasing.</p>
<p>Item No. 24, Qualifications of Vendor: The County will only consider solicitation responses from firms normally engaged in providing the types of commodities, services, or construction specified herein. Vendor must have adequate organization, facilities, equipment, and personnel to ensure prompt and efficient service to County. The County reserves the right to inspect the facilities, equipment, personnel and organization or to take any other action necessary to determine ability to perform in accordance with specifications, terms and conditions. The County will determine whether the evidence of ability to perform is satisfactory and reserves the right to reject responses where evidence or evaluation is determined to indicate inability to perform. The County reserves the right to consider a Vendor's history of any and all types of citations and/or violations, including those relating to suspensions, debarments, or environmental regulations in determining responsibility. Vendor should submit with its solicitation response a complete history of all citations and/or violations notices and dispositions thereof. Failure of a Vendor to submit such information may be grounds for termination of any contract awarded to successful Vendor. Vendor shall notify the County immediately of notice of any citations or violations which they may</p>	<p>Qualifications of Vendor: The County will only consider solicitation responses from firms normally engaged in providing the types of commodities, services, or construction specified herein. Vendor must have adequate organization, facilities, equipment, and personnel to ensure prompt and efficient service to County. The County reserves the right to inspect the facilities, equipment, personnel and organization or to take any other action necessary to determine ability to perform in accordance with specifications, terms and conditions. The County will determine whether the evidence of ability to perform is satisfactory and reserves the right to reject responses where evidence or evaluation is determined to indicate inability to perform. The County reserves the right to consider a Vendor's history of any and all types of citations and/or violations, including those relating to suspensions, debarments, or environmental regulations in determining responsibility. Vendor should submit with its solicitation response a complete history of all citations and/or violations notices and dispositions thereof. Failure of a Vendor to submit such information may be grounds for termination of any contract awarded to successful Vendor if such citations or violations had occurred.</p>

<p>receive after the opening date and during the time of performance under any contract awarded to them.</p>	<p>Vendor shall notify the County immediately of notice of any citations or violations which they may receive after the opening date and during the time of performance under any contract awarded to them.</p>
<p>Item No. 31, Audit Right and Retention Records: County shall have the right to audit the books, records, and accounts of awarded Vendor that are related to this contract. Vendor shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries to the contract. Vendor shall preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this contract. If any audit has been initiated and audit findings have not been resolved at the end of the retention period of three (3) years, whichever is longer, the books, records and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by County to be applicable to Vendor's records, Vendor shall comply with all requirements thereof; however, no confidentiality or nondisclosure requirement of either federal or state law shall be violated by Vendor. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry.</p>	<p>Audit Right and Retention Records: County, through the County Auditor, shall have the right to audit the books, records, and accounts of awarded Vendor that are related to this contract. Vendor shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries to the contract. Vendor shall preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this contract. If any audit has been initiated and audit findings have not been resolved at the end of the retention period of three (3) years, whichever is longer, the books, records and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by County to be applicable to Vendor's records, Vendor shall comply with all requirements thereof; however, no confidentiality or nondisclosure requirement of either federal or state law shall be violated by Vendor. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry.</p>
<p>Item No. 45: Warranties The Vendor shall obtain all manufacturers' warranties and guarantees of all equipment and materials required by this solicitation and any resultant orders in the name of the Board and shall deliver same to point of delivery.</p>	<p>Warranties and Guarantees: Vendor warrants to County that (i) products furnished hereunder will be free from defects in material, workmanship and title and will be of the kind and quality specified in the Vendor's written quotation and (ii) services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications. The foregoing shall apply only to failures to meet said warranties (excluding any defects in title) which appear within one (1) year from installation or eighteen (18) months from the date of shipment, whichever occurs first. In no case does this warranty apply to any failure or nonconformance with specifications caused by or attributable to any associated or complementary products not supplied under this contract or the process of manufacture on which the products are used. The warranty and remedies are conditioned upon (a) proper storage, installation, use and maintenance, and conformance with any applicable recommendations of Vendor, and (b) County promptly notifying Vendor of any defects and, if required, promptly making the product available for correction. If any product or service fails to meet the foregoing warranties (except title), Vendor shall thereupon correct any such failure either, at its option, (i) by repairing any defective or damaged part or parts of the products, and/or reperforming any defective service, or (ii) by making available, F.O.B. the County plant or other mutually agreed upon point of shipment, any necessary repaired or replacement parts. County shall</p>

	<p>approve and bear the costs of access (including removal and replacement of systems, structures or other parts of County's facility), de installation, decontamination, and re installation. If reperformance is not practicable, Vendor will furnish without charge services in an amount essentially equal to those that, in the sole judgment of Vendor, would have been required for reperformance. Where a failure cannot be corrected by Vendor's reasonable efforts, the parties will negotiate an equitable adjustment in price. The remedies provided in this Agreement are the exclusive remedies for all warranty claims based on failure of or defect in Equipment or Maintenance Services, regardless of when the failure or defect arises, and whether the warranty claim is described as based on contract, warranty, tort/extra-contractual liability (including negligence), strict liability or otherwise. The warranties provided herein are exclusive and are in lieu of all other warranties, conditions and guarantees whether written, oral, implied or statutory. NO IMPLIED OR STATUTORY WARRANTY, OR WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES. The Vendor shall obtain all manufacturers' warranties and guarantees of all equipment and materials required by this solicitation and any resultant orders in the name of the Board and shall deliver same to point of delivery.</p>
	<p>Added additional term: Services Work Scope Disclaimer - The Parties expressly acknowledge and agree that during the performance of Work, Vendor shall not be responsible for (a) supervision, direction or control of County's construction or other Vendors, subcontractors or employees of County at any time; (b) for the means, methods, techniques, sequences or scheduling of construction or other work performed by such other contractors or subcontractors; (c) be responsible for operation of County's, or County's customer's, equipment, but shall conform to and comply with County's jobsite safety policies and procedures.</p>