



October 12, 2023

**Barbara Hernandez**

**City Manager**

Via E-mail

Leeann.korst@cbre.com

Lee Ann Korst  
SE Regional Manager  
CBRE | Public Institutions & Education Solutions  
777 Brickell Ave #100  
Miami, FL 33131

Re: Letter Agreement between the City of Doral ("City") and CBRE Inc. ("CBRE") for Real Estate Services – Market Research, Massing, and Valuation

Dear Ms. Korst,

The City has received the attached proposal dated October 9, 2023, and wishes to engage CBRE for the services referenced therein subject to and in compliance with the provisions of the Florida Department of Management Services Contract #ITN-DMS-12/13-007A for Tenant-Broker and Real Estate Consulting Services ("Contract").

CBRE shall provide services to the City in accordance with requirements specified in the Contract. The following City of Doral requirements are applicable to this Letter Agreement:

1. This Letter Agreement, including appendices, and all matters relating thereto shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue shall be Miami-Dade County.
2. The following changes shall be incorporated to the Insurance and Indemnification clauses:
  - a. Section 6.1.1: Certificate holder must appear on the certificate of insurance as follows:

City of Doral  
8401 NW 53 Terrace  
Doral, FL 33166
  - b. Section 6.1.2: Replace State for City of Doral/City
  - c. Section 9.11: Replace State for City of Doral/City
3. CBRE shall be a registered vendor with the City for the duration of this Letter Agreement.

4. CBRE shall provide the following Real Estate Consulting services:
  - a. Phase I – Within five (5) days of the full execution of this Letter Agreement, CBRE will provide a market study of available properties located within the City of Doral that meets the criteria to be provided by the City.
  - b. Phase II – Upon selection of properties by the City in writing, CBRE will conduct market research and analysis to generate a comprehensive report. The report shall include massing studies, financial analysis, market value estimates under different scenarios, highest and best use analysis, potential project risk, and revenue potential analysis. CBRE shall provide the City with a final report within four (4) weeks of the selection of the parcel and will revise as needed to ensure the report is in a form acceptable to the City. CBRE shall not commence Phase II for any parcel unless and until directed in writing by the City Manager or Designee.
  
5. Payment Terms:
  - a. Upon completion of Phase I and delivery of the Phase I market study to the City, the City will pay CBRE a flat fee of \$500.
  - b. Upon completion of Phase II and delivery to the City of the Phase II Report for the selected parcel(s), the City will pay CBRE a flat fee of \$4,950 per parcel.
  - c. In no event shall the fees paid to CBRE under this letter agreement exceed thirty thousand dollars (\$30,000).

Please kindly confirm receipt of this letter and your agreement to the terms and conditions contained herein at your earliest convenience by executing the below. If you have any questions, please do not hesitate to contact Jacqueline Lorenzo, Procurement and Asset Management Director at [Jacqueline.lorenzo@cityofdoral.com](mailto:Jacqueline.lorenzo@cityofdoral.com).

Sincerely,



Barbara Hernandez  
City Manager

Accepted: CBRE, Inc.



Date: 10/17/2023

~~Lee Ann Korst~~, Michael DiBlasi  
~~SE Regional Manager~~ Managing Director



CBRE, Inc.  
777 Brickell Ave #100  
Miami, FL 33131  
Tel +1 305 374 1000  
[www.cbre.com](http://www.cbre.com)

October 9, 2023

Ms. Jacky Lorenzo  
Procurement Manager  
City of Doral Government Center  
8401 NW 53rd Terrace  
Doral, Florida 33166

RE: Engagement of CBRE for Real Estate Services for the City of Doral

Dear Ms. Lorenzo,

Thank you for choosing CBRE to provide real estate services to the City of Doral.

We understand that you are seeking services in support of potential acquisitions by the City and would like to understand current availability and development potential of suitable parcels.

CBRE will deliver these services in two phases:

- 1) Phase 1: CBRE will deliver a market study of available property that meets your criteria and is for sale in Doral. This service will be provided for a flat fee of \$500.
- 2) Phase 2: CBRE will prepare massing studies demonstrating the feasibility of what types of developments are possible and at what level of density, and what corresponding value the City can expect based on that. These analyses will be priced at \$4,950/parcel.

A project of this type requires professionals who understand government real estate, are deeply steeped in the local market, and can assure the confidentiality needed for this assignment. Lee Ann Korst, leader of CBRE's Public Institutions & Education Solutions team in the Southeast, will lead the project closely supported by Clarissa V. Willis, a Doral market specialist, to ensure the City's requirements and local market knowledge, respectively, are met.

The above-mentioned assignment and services shall be subject to and performed in compliance with the Florida Department of Management Services Contract #ITN-DMS-12/13-007A for Tenant-Broker and Real Estate Consulting Services.

"2.1.3. Real Estate Services.

An Eligible User may purchase additional services related to real estate management, support, operations, or other similarly related services. The Eligible User will provide a detailed Scope of Services, timelines for performance, business strategies, and desired pricing model for the needed service. Related real estate consulting and transaction services include, but are not limited to, relocation services, project management services, acquisition services, sale, lease, or disposition of properties, trading or swapping of properties, strategic consulting, real estate financial services, facilities management services, etc."

We are on stand-by to begin work on this important project and capture the advantages of the highly competitive market for development in Doral. If we are selected, the City of Doral has our personal promise that our partnership will be governed by CBRE's RISE values: Respect, Integrity, Service, Excellence

We look forward to supporting the City of Doral on this important project.

Sincerely,

Lee Ann Korst  
SE Regional Manager  
CBRE | Public Institutions & Education Solutions  
T +1 850 251 9319  
[Leeann.korst@cbre.com](mailto:Leeann.korst@cbre.com)



FLORIDA DEPARTMENT OF MANAGEMENT SERVICES

real estate development  
and management

We serve those who serve Florida

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# **TENANT BROKER AND REAL ESTATE CONSULTING SERVICES**

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**Contract By and Between**

**CBRE, Inc.**

**And the**

**State of Florida**

**Acting Through the**

**Department Of Management Services**

**DMS-12/13-007A**

## CONTRACT

This Contract (“Contract”), effective the date of full execution (“effective date”), is, between CBRE, Inc. (“Contractor”), a Corporation with an office at 225 Water Street, Suite 110, Jacksonville, Florida 32202, and the State of Florida, Department of Management Services (the “Department”), with offices at 4050 Esplanade Way, Tallahassee, Florida 32399-0950 (each a “Party” and collectively, the “Parties”). Upon effective date of this Contract, contract DMS-06/07-115A, is replaced in full by this Contract. All new transactions shall be in accordance with this Contract.

NOW THEREFORE, in consideration of the premises and mutual covenants set forth herein, the Parties agree as follows:

### Section

1

### Definitions

#### 1.1 Definitions.

“Credited Services” means those real estate consulting services which are funded by Service Credit Hours.

“Deliverables” means those actions, items, or materials delivered as part of the performance of the Services by Contractor as defined in this Contract.

“Eligible User” means any of the various state officers, State Agencies, departments, school boards, commissions, divisions, bureaus, councils and any other unit of organization, however designated, of state government and any other instrumentality of the State of Florida including the state courts, the state legislature, and the state university system including all governmental agencies, as defined in Section 163.3164, F.S., which have a physical presence within the State of Florida and any independent nonprofit college or university that is located within the State of Florida and is accredited by the Southern Association of Colleges and Schools.

“Engagement Checklist” means the list of desired services and is Appendix 1 to this contract.

“Purchase Order” means the document consistent with Section 287.058(1), Florida Statutes, used by an Eligible User to make a purchase under the Contract.

“Request for Space Need (RSN)” means an electronic submitted request, by an agency to DMS, to begin to address space needs.

“Scope of Services” means an official request for services sought that clearly establishes all tasks that the contractor is required to perform; outlines the project needs; identifies quantifiable, measurable, and verifiable units of deliverables; as well as time frames for performance and costing structure. For leasing transactions, the Scope of Services should take the form of an Engagement Checklist.

“Services” means the services assigned to Contractor as provided in this Contract.

“Service Credit Hours” means hours accrued pursuant to Section 2.4.1 below.

“State” means the State of Florida.

## 1.2 Rules of Interpretation.

In this Contract, unless otherwise indicated, or otherwise required by the context, the following rules of interpretation shall apply:

- (a) reference to, and the definition of, any document (including any exhibits) shall be deemed a reference to such document as it may be amended, supplemented, revised, or modified in the method prescribed herein;
- (b) all references to a “Section,” “Appendix,” or “Exhibit” are to a Section, Appendix, or Exhibit of this Contract;
- (c) Section headings and other captions are for the purpose of reference only and do not limit or affect the content, meaning, or interpretation of the text;
- (d) defined terms in the singular shall include the plural and vice versa, and the masculine, feminine, or neuter gender shall include all genders;
- (e) the words “hereof,” “herein” and “hereunder,” and words of similar import, shall refer to this Contract as a whole and not to any particular provision of this Contract;
- (f) the words “include,” “includes,” and “including” are deemed to be followed by the phrase “without limitation;” and
- (g) any reference to a governmental entity or person shall include the governmental entity’s or person's authorized successors and assigns.

<b>Section 2</b>	<b>Scope of Services and Compensation</b>
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### 2.1. Services.

The following Services shall be provided by Contractor in exchange for compensation as set forth in Section 2.3 below:

#### 2.1.1. Lease Transaction Services.

Contractor shall provide Eligible Users with the technical expertise to complete commercial lease and real estate transactions. Prior to the commencement of Services for leases, Contractor shall ensure that a Purchase Order has been issued in accordance with Section 4.1, and for State Agencies an RSN has been approved in accordance with either an Engagement Checklist or an appropriate Scope of Services. (see Appendix 1).

For each lease transaction, Contractor shall provide, at a **minimum**, the items set forth on the Engagement Checklist or the items as indicated on a scope of work attached to a Purchase Order. The services will be completed in accordance with the performance standards and metrics established under Section 2.5 below.

Should it be requested and approved through the Contract Manager, an Eligible User may be allowed to use accumulated credit hours, at a quoted rate, for any or all of these activities.

Lease Transaction Services to be provided per this Contract are to include the following:

- (a) Review, validation, and recommendation regarding the suitability of boundaries or the desirable area for a lease location that meets the Eligible User's needs using quantitative data;
- (b) Review, validation, and recommendation regarding the primary criteria for evaluating legitimate potential space and documentation of such criteria in the Engagement Checklist or documented scope of services;
- (c) For markets where such information is readily available, a summary of rental rate trends, vacancy trends, and absorption trends for a period as agreed upon and stipulated in the Engagement Checklist or documented scope of services;
- (d) Identification of all state-owned or leased real property, within a defined radius, as reported on publicly-available state databases, as agreed upon and stipulated in the Engagement Checklist or documented scope of services;
- (e) Identification of lease-action options including a pro/con analysis of each option and a projected cost per occupant for each option;
- (f) Assessment of proposed options compared to recommendations of most recent Master Leasing Report and Strategic Leasing Plan;
- (g) Development or review of intended lease documents and identification of changes that could broaden competition and potential negotiated cost savings;
- (h) Distribution of procurement documents via the method and to the extent agreed upon and stipulated in the Engagement Checklist or Scope of Work;
- (i) Review and validation, prior to publishing, of all anticipated responses to formally submitted procurement questions;
- (j) Participation at all vendor/bidder conferences or meetings;
- (k) Independent assessment of all procurement responses to determine bidder responsiveness, degree of completion of response, and technical evaluation of response;
- (l) Recommendation as to which bidder the Eligible User should negotiate and the rationale for such opinion;
- (m) Market analysis inclusive of all comparable facilities within a proximity to the subject facility as agreed upon and stipulated in the Engagement Checklist or Scope of Work;
- (n) A summary detailing the negotiation;
- (o) Analysis of bidders' responses to identify the facility and lease terms and conditions that the Contractor recommends are in the best interest of the state for the Eligible User to select;
- (p) Review, validation, and recommendation of modifications to final lease documents prior to submission to selected bidder;
- (q) Routing of lease documents for appropriate approval;
- (r) Lease transaction service close out review with Eligible User using Engagement Checklist to verify and validate completion of all agreed upon services.
- (s) Partnership with Eligible Users and landlords to assist with the monitoring of tenant build out.
- (t) Guide the landlord on the process for payment of the commission to the Eligible User.

### 2.1.2. Portfolio Strategy Services.

To the extent requested by the Department, and in accordance with this Contract, Contractor may be requested to assist and participate in the development and implementation of annual Strategic Leasing Plan(s) and Master Leasing Report(s) (collectively, the "Plan"). These services shall include:

- (a) Attendance and participation in a portfolio strategy-planning workshop no less than 6 months prior to submission date of the Plan with prior reasonable notice to the Contractor. This workshop shall address the following:
  1. Project timeline for development of the Plan;
  2. List of data required for development of the Plan;
  3. Review of progress on prior year's Plan;
  4. Validation of goals of prior year's Plan for inclusion in current Plan;
  5. Project team meeting schedule;
  6. Assignment of project team member responsibilities.
- (b) Summary of key environmental factors for consideration of impact on portfolio;
- (c) Analysis of market rent trends, vacancy, and absorption;
- (d) Analysis of market areas of concern and opportunity;
- (e) Analysis of portfolio supply and demand;
- (f) Summary of strategic plans for consideration against the Plan;
- (g) Editorial review of drafts of the Plan;
- (h) Plan implementation to the extent that implementation activities are considered Lease Transaction Services.

### 2.1.3. Real Estate Services.

An Eligible User may purchase additional services related to real estate management, support, operations, or other similarly related services. The Eligible User will provide a detailed Scope of Services, timelines for performance, business strategies, and desired pricing model for the needed service. Related real estate consulting and transactional services include, but are not limited to, relocation services, project management services, acquisition services, sale, lease, or disposition of properties, trading or swapping of properties, strategic consulting, real estate financial services, facilities management services, etc. Tenant Brokers will provide the Eligible User a quote in the format/method desired by the Eligible User which can be either a commission based quote, a flat fee for services quote, or an hourly rate quotes at the rates at or below those indicated in this contract.

**INDEPENDENT MARKET ANALYSIS (IMA):** An Eligible User may request an IMA that is independent from a lease transaction and will be paid directly by the Eligible User separate from any transaction. An IMA will consist of evaluating current Eligible User needs and obtaining a minimum of three (3) comparable current properties in the market that are equally leveraged to be similar to the current Eligible User need. If the Eligible User needs a full service lease that includes a build out, the comparable should be estimated to include those rates (not triple net). This service will be paid as indicated in Section 2.3.



**BROKER OPINION OF VALUE or BROKER PRICE OPINION (BOV/BPO):** An Eligible User may request a Broker of Opinion Value for a specific property. A BOV/BPO shall be an indication of the current market price for a particular parcel of land, building, or combination of land and building that takes into account current area rates; value of similar surrounding properties; asking prices; local and regional sold prices; demographic reports; the costs associated with getting the property ready for sale, and the costs of any needed repairs. This service will be paid as indicated in Section 2.3.

The Eligible User shall issue a Purchase Order or a Scope of Services to Contractor for real estate consulting services. State Agencies are required to use a Purchase Order.

An Eligible User may negotiate directly with any one contractor for consulting services, but the Department encourages Eligible Users to request quotes from the other contractor awarded this bid.

Contractor will not charge and shall not be entitled to payment for any real estate consulting services that result in or are incidental to a lease transaction for which compensation is paid under Section 2.3.

## **2.2. Eligible User's Right to Commission.**

Whenever Contractor provides Services under 2.1.1., Contractor or the Eligible User shall negotiate a commission ("Commission"), in accordance with Section 2.3. Contractor hereby assigns to the Eligible User all of Contractor's rights, title and interest to any Commission. All commissions rates stated in 2.3 are ceiling rates; lower compensation rates may be established per transaction with the Contractor and with an Eligible User.

Contractor will use reasonable efforts to ensure that any Commission owed to Contractor resulting from Contractor providing services under Section 2.1.1 of this Contract will be directed to the Eligible User for disbursement to Contractor, in accordance with Chapter 255, Florida Statutes.

If a landlord wrongfully withholds a Commission, the Parties and the Eligible User will cooperate in the diligent pursuit of collection.

The Contractor may not submit a request for Commission reimbursement (invoice) to the Eligible User until and unless the Commission is paid to the Eligible User in accordance with this paragraph.

Moneys paid by a landlord to the Eligible User are not subject to the charges imposed under Section 215.20, Florida Statutes.

DMS has the authority to negotiate with the Contractor for a cap on commissions per Service or more broadly.

## **2.3. Contractor Compensation.**

**2.3.1.** There is no Contractor compensation in excess or in addition to those payments established herein for Services.

### **2.3.1. Compensation for Lease Transaction Services.**

As compensation for performing the Lease Transaction Services allowed under this Agreement, Contractor shall receive the Commission paid by the landlord through the Eligible User as indicated below. All payments for Services shall be made as indicated on the Purchase Order.

**Table 1 - Commission Schedule**

Type of Lease Agreement Negotiated	Maximum Compensation Rate	
New leases <sup>1</sup>	Total Annual Rent of the Base Term of the Lease	Maximum Rate
	\$ 0 - \$ 500,000	3.50%
	\$ 500,001 - \$2,500,000	3.25%
	\$ 2,500,001 - \$4,500,000	3.00%
	\$ 4,500,001 - \$6,499,999	2.75%
Lease renewal, lease modifications, stay-in-place lease, lease extension, lease expansion	2% of the rent to be paid for the term of the particular lease renewal, modification, extension, expansion, or stay-in-place negotiated. <sup>2</sup>	
All leases for warehouse, hangar or storage space	2% of the sum of the annual rent to be paid over the initial term of the lease for leases 0-5,000 square feet  Leases over 5,001 square feet follow the new lease chart above.	
Independent Market Analysis	\$ <u>225.000</u> per IMA	
Broker Opinion of Value or a Broker Price Option - Undeveloped Properties*	\$ <u>500.00</u> per BOV/BPO	
Broker Opinion of Value or a Broker Price Option - Developed Properties	\$ <u>250.00</u> per BOV/BPO	

\*"Undeveloped properties" is defined as property that contains no structures.

Rates in excess of those established in Table 1 are not authorized. Contractor will not charge and shall not be entitled to payment for any consulting services that result in or are incidental to a lease transaction for which compensation is paid under Section 2.3.

Commissions received by the Eligible User on behalf of Contractor shall be paid to Contractor as indicated herein. However, under no circumstances shall Commissions become payable by Eligible User until such payments have been remitted to the Eligible User by the landlord.

Commission installments are paid as follows:

**New leases:**

50% upon full execution of the lease documents by the landlord the Eligible User and the Department; and 50% upon occupancy by the Eligible User of the leased premises.

<sup>1</sup> At DMS's discretion and approval, a lease that has been substantially restructured to decrease the effective rental rate for leased space, resulting in a notable reduction in the overall lease costs in accordance with the objectives established in the annual *Strategic Leasing Plan*, can be considered a "new lease" for the purposes of compensation.

<sup>2</sup> If the existing lease term is incorporated in a new transaction, such term (or value) shall be excluded from the commission calculation.

**Renegotiated/Modified Leases:**

Should the lease be in the same location and thereby not require a move on the part of the Eligible User, the commission shall be paid 100% at time of full lease execution by the landlord, the Eligible User, and Department.

**All Other Lease Transaction Services**

Payment will be made as indicated on the Purchase Order.

**2.3.2. Compensation for Portfolio Strategic Services.**

Consulting services shall be priced on an hourly or fee-for-service basis, neither of which shall exceed the hourly rates identified by the Contractor and reflected in Table 2 below.

**Table 2 – Labor Rate Schedule**

<b>CBRE, INC.</b>		
<i>Position</i>	<i>Rate</i>	<i>Per Unit</i>
Facilities Management/Sourcing	\$	165.00/ Hr
Preventive Maintenance /Work Order System	\$	165.00/ Hr
Workplace Strategies	\$	165.00/ Hr
Organization and Process	\$	165.00/ Hr
Energy	\$	165.00/ Hr
Energy Procurement Systems	\$	165.00/ Hr
Valuation and Advisory	\$	295.00/ Hr
All other CBRE consultants will be billed at a blended rate	\$	165.00/ Hr
<b>GENSLER (subcontractor)</b>		
<i>Position</i>		
Space Management	\$	165.00/ Hr
<b>CARL WALKER, INC (subcontractor)</b>		
<i>Position</i>		
Parking	\$	165.00/Hr

**2.3.3. No Payment for Expenses.**

Contractor shall not be entitled to reimbursement of any costs or expenses incurred in the course of performing the Services, including costs associated with travel, couriers, meeting preparation, or meeting attendance, except by prior and specific written agreement with the Eligible User. Costs associated with travel are subject to section 112.061, Florida Statutes

**2.3.4. No Other Compensation.**

Contractor may not receive any other compensation for Services that are rendered under this Contract. All terms relating to the compensation of Contractor shall be as specified in this Contract and may not be supplemented or modified absent prior amendment to this Contract consistent with the terms of the solicitation.

## 2.4. Service Credit Hours.

As of the effective date of this Contract, the Department begins with two hundred (200) Service Credit Hours to be used by the Department for portfolio strategy services and real estate consulting services as identified in this Contract. Utilization of Service Credit Hours shall be tracked using Appendix 2 to this Amendment, entitled "Service Credit Hours Accounting Form."

The Contractor agrees to issue all Service Credit Hours to the Department upon receipt of agreed payments for any of the service categories identified in the Contract. The Department may use Service Credit Hours, at its discretion, for any Services, and may allocate those credit hours to user agencies for use on specific projects.

### 2.4.1. Accrual of Service Credit Hours.

In addition to those stated above, Service Credit Hours are also accrued as follows:

- (a) One (1) Service Credit Hours shall be accrued by the Department on the Contract Effective Date and each year thereafter, on the anniversary month and day the contract was effective; and
- (b) One Service Credit Hour shall be accrued by the Department for each \$1,667.00 received by Contractor under this Contract.

### 2.4.2. Use of Service Credit Hours.

The Department may use Service Credit Hours for the benefit of individual Eligible Users as payment for any Service provided for in the Contract at the rate of one Service Credit Hour for one hour of Service. To initiate utilization of Service Credit Hours, the Department will complete and submit to Contractor a task order using Appendix 3 to this Contract, entitled "Credit Hour Direct Order Request & Approval Form."

Unused Service Credit Hours will carry over to subsequent contract years and shall survive the expiration or termination of this Contract for 90 days. The Contractor shall maintain a detailed accounting of Service Credit Hour accrual and usage and shall report accrual and usage to the Department monthly, by using Appendix 2 to this Contract.

## 2.5. Performance Standards.

In providing the services per this Contract, Contractor shall be required to meet or exceed the following performance standards:

### 2.5.1. General Performance Standards.

- (a) Contractor shall work under the direction, supervision, and authority of the Eligible User, subject to the statutes and rules governing lease procurements;
- (b) Contractor will receive training from the Department concerning the rules governing general leasing and the procurement of leases;
- (c) Contractor will provide all labor, materials and supplies necessary to perform the Services;
- (d) Contractor must maintain an office in Florida and shall establish an Account Management Team to work directly with Eligible Users. This team shall consist of a minimum of one senior account executive and other licensed tenant brokers;
- (e) Tenant brokers must comply with all applicable provisions of chapter 475, Florida Statutes;

- (f) The Contractor shall deliver all Services in a professional, skillful manner in accordance with the standards and quality prevailing among first-rate, nationally-recognized firms in the industry and in accordance with this Contract;
- (g) Contractor shall provide the Department written updates on transactions in process of all Services under this Contract monthly. At its sole discretion, the Department may approve alternate update frequencies.

#### **2.5.2. Lease Transaction Services Performance Deliverables.**

- (a) Contractor shall ensure completion, in sufficient detail to document the full expectations of a subject lease transaction, of an Engagement Checklist or documented scope of services for each transaction under Section 2.1.1. Contractor shall distribute copies of Appendix 1 to this Contract, entitled the "Tenant Broker Engagement Checklist," to the appropriate representatives of the Eligible User and to the respective account manager with the Department.
- (b) Contractor shall complete the tasks agreed to during the initial engagement and documented on the Tenant Broker Engagement Checklist to meet, or exceed, the expectations of the Eligible User.
- (c) Upon completion of a subject lease transaction, Contractor should conduct a performance review with the Eligible User to verify/validate completion of tasks agreed upon at the time of the completion of Tenant Broker Engagement Checklist, or as mutually amended. Contractor will ensure documentation of the performance review and distribution of copies of the completed Tenant Broker Engagement Checklist to appropriate representatives of the Eligible User and the Department.

#### **2.5.3. Portfolio Strategy Services Performance Deliverables.**

Unless otherwise agreed to in writing, Contractor shall deliver all Portfolio Strategy Services to the Department within seven calendar days of the Department's formal request.

#### **2.5.4. Satisfaction Surveys.**

The Department shall conduct periodic customer-satisfaction surveys in the form of Tenant Broker Evaluation forms to monitor Contractor's performance. The customer-satisfaction survey will be the Tenant Broker Evaluation form, which will be required for each transaction.

- (a) Contractors shall encourage Eligible Users to correctly complete the evaluation form.
- (b) The Department shall provide Contractor with copies of the evaluation responses received on a quarterly basis.
- (c) Where evaluation form indicates performance expectations were not met (grade of D or lower), Contractor shall provide a written statement explaining Contractor's position on the assessment of the Eligible User and an intended course of action to ensure satisfactory completion of expectation in future transactions.

### **2.6. Acceptance of Services.**

Within twenty (20) calendar days of receipt of each Deliverable to the Eligible User, the Eligible User shall give written notification of acceptance or rejection (with requirements for resubmission) to Contractor. Failure of the Eligible User to deliver notification of acceptance or rejection shall constitute an acceptance by the Eligible User by default.

## 2.7. Rejected Services.

Contractor shall have five (5) calendar days to correct any item rejected by the Eligible User for nonconformance with agreed upon performance standards.

Within five (5) calendar days of Contractor's resubmission, the Eligible User shall deliver written notification of acceptance or rejection (with reasonable specificity for rejection) to Contractor. At the discretion of the Eligible User, rejection of a resubmitted item due under the Services of this Contract may constitute a default of the Contract pursuant to Section 7 of this Contract.

## 2.8. Non-Exclusivity.

Nothing in this Contract shall be interpreted to exclude the Department from providing Services the same as or substantially similar to the Services for an Eligible User.

Nothing in this Contract shall be interpreted to restrict any Eligible User from hiring third parties to perform services the same as or substantially similar to the Services. However, once Contractor has begun performing Services hereunder, Contractor shall not be replaced without prior notice and due cause. If appropriate notice is provided, Contractor shall not be entitled to any Commission or other compensation for the Services.

# Section 3

## Contract Administration

### 3.1. Contract Managers.

Each Party will designate a Contract Manager whose responsibility shall be to oversee the Party's performance of its duties and obligations pursuant to the terms of this Contract. This person shall at all times have the skills, experience and resources necessary to manage the Contract. A Party may replace its Contract Manager at any time upon written notification (by email or otherwise) to the other Party.

As of the Effective Date, the Department's Contract Manager is the Bureau Chief, Real Property Leasing, Division of Real Estate Development and Management, 4050 Esplanade Way, Suite 315, Tallahassee, FL 32399.

Contractor shall have its brokers meet in person with the Contract Manager annually to provide information as requested by the Contract Manager and work toward resolving any operational issues. The Department and contractor's Contract Managers will meet at least once a year to review contract performance, contract deliverables, training, contract gaps and/or clarifications. The meeting will be scheduled in Tallahassee and at a date and time as mutually agreeable.

### 3.2. Contractor's Account Management Team.

#### 3.2.1. Account Managers.

Contractor shall designate Contractor's primary account manager ("Account Manager") dedicated to the Department. The Account Manager (or designee) shall be available to the Department from 8:00 a.m. until 5:00 p.m., Monday through Friday, excluding State holidays. The Account Manager must have sufficient experience and authority to resolve any conflicts arising from the delivery of Services under this Contract.

### **3.2.2. Contractor's Representative.**

Contractor shall designate Contractor's representatives ("Contractor's Representatives") dedicated to an Eligible User for each transaction performed under Lease Transaction Services. Contractor's Representatives (or designees) shall be available to the Eligible User and the Department from 8:00 a.m. until 5:00 p.m., Monday through Friday, excluding State holidays. Contractor's Representatives must have sufficient technical experience and authority to carry out all agreed upon Lease Transaction Services.

## **3.3. Employees.**

### **3.3.1. No Joint Employees.**

Neither Party shall be deemed a joint employer of the other's employees, each Party being responsible for any and all claims by its employees. Neither Party's employees shall be deemed "leased" employees of the other for any purpose.

### **3.3.2. Subcontractors.**

Contractor is responsible for the acts or omissions of all Subcontractors used by Contractor in the performance of Services. Contractor shall not be allowed to subcontract or assign any of its duties and obligations hereunder without the prior written consent of the Department, and the Department must approve all subcontracts. The State shall have no liability of any kind for subcontractor claims, demands, loss, damage, negligence, or any expense relating, directly, or indirectly, to Subcontractors.

### **3.3.3. Removal or Replacement of Employees and Subcontractors for Cause.**

The State may refuse access to or require replacement of any Contractor employee, Subcontractor, or agent for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Department's security or other requirements. Such action shall not relieve Contractor of its obligation to perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of Contractor's employees, Subcontractors, or agents.

### **3.3.4. Non-Discrimination and Equal Opportunity.**

Florida is a state rich in its diversity and is dedicated to fostering the continued development and economic growth of small and minority/women owned businesses. Central to this initiative is the participation of a diverse group of vendors doing business with the State. The State maintains data to establish benchmarks from which to measure supplier diversity in State contracting. Vendors who contract with the State are obligated to provide reasonable information from time to time related to the use of minority/women-owned businesses. The Department will inform Contractor of those obligations as they arise and Contractor will have a reasonable time to comply.

### **3.3.5. Employment of State Workers.**

During the term of this Contract, Contractor shall not knowingly employ, subcontract with, or sub-grant to any person (including any non-governmental entity in which such person has any employment or other material interest as defined by Section 112.312(15), Florida Statutes) who is employed by the State or who has participated in the performance or procurement of this Contract, except as provided in Section 112.3185, Florida Statutes.

### **3.3.6. Background Screening.**

In addition to any background screening required by the Contractor as a condition of employment, the Contractor warrants that it will conduct a criminal background screening of, or ensure that such a screening is conducted for, each of its employees, subcontractor personnel, independent contractors, leased employees, volunteers, licensees, or other persons, hereinafter referred to as "Person" or "Persons," operating under their direction with access to State of Florida data. "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network. "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs, or instructions, whether said information is confidential information or personal information. Data may be in any form, including but not limited to, in storage media, stored in the memory of the computer, in transit or presented on a display device, or a hard copy. The Contractor shall ensure that the background screening is conducted on all Persons directly performing services under the Contract whether or not the Person has access to state of Florida Data, as well as those persons who are not performing services under the Contract but have access, including indirect access, to State of Florida Data.

The minimum background check process shall include a check of the following databases through a law enforcement agency or a Professional Background Screener accredited by the National Association of Professional Background Screeners or a comparable standard:

Social Security Number Trace; and  
Criminal Records (Federal, State and County criminal felony and misdemeanor, national criminal database for all states which make such data available);

The Contractor agrees that each Person will be screened as a prior condition for performing services or having access to State of Florida Data. The Contractor is responsible for any and all costs and expenses in obtaining and maintaining the criminal background screening information for each Person described above. The Contractor shall maintain documentation of the screening in the Person's employment file.

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

#### **1. Disqualifying Offenses/ Criminal Finding**

A "Criminal Finding" is defined as a misdemeanor or felony conviction, plea of nolo contendere, plea of guilty, or adjudication of guilt withheld record for any disqualifying offense listed below. If at any time it is determined that a Person has a Criminal Finding within the last ten (10) years from the date of the court's determination for the crimes listed below, or their equivalent in any jurisdiction, the Contractor is required to immediately remove that Person from any position with access to State of Florida Data or directly performing services under the Contract. The disqualifying offenses are:

Computer related or information technology crimes  
Fraudulent practices, false pretenses and frauds, and credit card crimes  
Forgery and counterfeiting



Violations involving checks and drafts  
Felony theft

If the Contractor removes a Person from a position under this provision due to a Criminal Finding, it may obtain information regarding the incident and determine whether that Person should continue providing services under the Contract or have access to State of Florida Data. The Contractor shall consider the following factors only in making the determination: i) the nature and gravity of the offense, ii) the amount of time that lapsed since the offense, iii) the rehabilitation efforts of the person, and iv) the relevancy of the offense to the job duties of the Person. During the process of collecting the information and making a decision, the Contractor shall not allow the Person to perform services or have access to state of Florida Data.

**2. Self-Disclosure**

The Contractor shall ensure that all Persons have a responsibility to self-report to the Contractor within three (3) calendar days a Criminal Finding or an updated court disposition of a Criminal Finding. The Contractor shall notify the Department's Contract Manager within 24 hours of all details concerning any Criminal Finding or updated court disposition of such Criminal Finding as reported by a Person. The Contractor shall immediately assess whether to disallow that Person access to any State of Florida Data or from directly performing services under the contract. Additionally, the Contractor shall require that the Person complete an annual certification that they have not received any additional Criminal Findings and shall maintain that certification in the employment file.

**3. Refresh Screening**

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

**4. Duty to Provide Secure Data**

The Contractor shall maintain the security of State of Florida Data including, but not limited to, a secure area around any display of such Data or Data that is otherwise visible. The Contractor shall also comply with all other state and federal rules and regulations regarding security of information.

**5. Department's Ability to Audit Screening Compliance and Inspect Locations**

The Department reserves the right to audit the Contractor's background screening process upon two days prior written notice to the Contractor during the Term of the Contract. The Department shall have the right to inspect the Contractor's work area and/or location upon two business days prior written notice to the Contractor to ensure that access to the State of Florida Data is secure and in compliance with the Contract and all applicable state and federal rules and regulations.

**6. Audit Rights**

The Department shall have the right to audit compliance with this Section at any time, and Contractor and its Subcontractors shall cooperate with this audit process.

## Section 4

# Service Orders and Financial Management

### 4.1. Procurement Documentation.

#### LEASE TRANSACTION SERVICES:

The Contractor **shall not** deliver or furnish **any** leasing transaction services under this Contract until an approved RSN is received from the Department and either a Purchase Order or an approved Credit Hour Direct Order is received from the Eligible User. All Purchase or Direct Orders shall:

- (a) Bear the contract number DMS 12/13-007A; and
- (b) Be placed by the Eligible User directly with the Contractor; and
- (c) Be deemed to incorporate by reference the terms of this Contract;
- (d) Contain performance standards for all deliverables with associated time frames;
- (e) Will have a completed Engagement Checklist or an Eligible User defined Scope of Services; and
- (f) Will have a DMS approved RSN on file before work can begin.

Any discrepancy between the Contract terms and the terms stated on the Purchase Order, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Eligible User.

The Contractor must receive Purchase Orders no later than thirty days prior to the last day of the Contract's term to be considered timely. The Contractor is obliged to fill those orders in accordance with the Contract. Timely Purchase Orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions thereof shall survive the termination of the Contract.

Within four (4) business days of receiving a Purchase Order or Direct Order, the Contractor will provide the Eligible User with a written acknowledgement that the Contractor either accepts or rejects the Purchase Order, stating with reasonable specificity reasons for rejecting a Purchase Order. The Contractor shall not reject a Purchase Order or Direct Order unless the Order contains terms that impose unreasonable burdens, represent a conflict of interest, or are inconsistent with other provisions of this Contract.

#### OTHER REAL ESTATE SERVICES:

Requests from an Eligible User for services other than leasing transaction services shall be documented by a Purchase Order, Scope of Services, or other written agreement which clearly establishes specific tasks the Contractor is required to perform, outlines the request desired, period of performance, specific deliverables that must be provided and accepted prior to payment, specific criteria that will be used to determine the contractor's successful performance, payment type (commission, flat fee, or hourly) and financial consequences that the Eligible User will apply if the Contractor fails to perform in accordance with the contract. This includes the use of a broker for IMA, or BOV/BPO.

### 4.2. Invoicing and Payment.

#### 4.2.1. Invoices.

Invoices shall contain the Contract Number, Purchase Order Number, and Contractor's Name. The Eligible User may require any other information from Contractor that the Eligible User deems necessary to verify any amount owed under the Contract. At the Eligible User's option, Contractor may be required to invoice electronically pursuant to set guidelines. The Contractor may supply electronic invoices in lieu

of paper-based invoices for those transactions processed through the MyFloridaMarketplace System. Electronic invoices shall be submitted through the Ariba Supplier Network (ASN) in one of the following mechanisms – EDI 810, cXML, or web-based invoice entry within the ASN.

#### **4.2.2. Payment.**

Payment shall be made in accordance with sections 215.422 and 287.0585 and 255.25 of the Florida Statutes, which govern time limits for payment of invoices. Time limits do not begin until Contractor submits a properly completed invoice received after the submission of the actual commission check from the Landlord to the Eligible User. Invoices that must be returned to Contractor due to preparation errors will result in a delay in payment. Contractors may call (850) 413-7269 Monday through Friday to inquire about the status of payments by Eligible Users. An Eligible User's delay in payment shall not constitute a breach of the Contract and shall not relieve Contractor of its obligations to the Department or to other Eligible Users.

#### **4.2.3. MyFloridaMarketPlace Fee.**

The Department has instituted MyFloridaMarketPlace, a statewide eProcurement System. Pursuant to section 287.057(23), Florida Statutes, all payments shall be assessed a Transaction Fee of one percent (1.0%), which Contractor shall pay to the State.

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

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

Failure to comply with these requirements shall constitute grounds for declaring Contractor in default and recovering reprocurement costs from Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.**

#### **4.2.4. No Surcharge on Eligible Users.**

Monies paid to Contractor are exempt from any charge imposed under Section 287.1345, Florida Statutes.

#### **4.2.5. Disputed Invoices.**

If an Eligible User reasonably and in good faith disputes that any portion of any amount claimed by Contractor is payable or has been erroneously paid, as the case may be, then the Eligible User will timely pay any undisputed portion of the amount and will provide Contractor with written notice specifying the disputed amount and the basis for the dispute in reasonable detail. Upon resolution of the disputed portion, any amounts owed to Contractor shall be paid within thirty (30) calendar days after the date such amounts were agreed upon. If payment is not available within forty (40) business days, measured from the latter of the date the invoice is received, or the services are received, inspected and approved, an interest penalty will be due at a rate as established pursuant to Section 55.03(1) of the Florida Statutes on the unpaid balance from the expiration of such forty (40) calendar day period until such time as the

warrant is issued to Contractor. Invoices returned to Contractor due to preparation errors will result in a payment delay. Invoice payment requirements do not start until a properly completed invoice is provided to the Eligible User.

#### 4.3. Taxes.

The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on Contractor or for any taxes levied on employees' wages.

#### 4.4. Audit Rights.

The Department reserves the right to inspect, at any reasonable time with prior notice, the equipment and other facilities of Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.

Contractor recognizes and acknowledges Florida's broad public records law and therefore agrees, upon reasonable notice, to provide the State with reasonable access to audit, inspect, and copy all records and information, including records and information stored electronically, related to this Contract that are public record under Chapter 119, Florida Statutes, and section 24, Article I of the Florida Constitution, and which have not been exempt. Without limiting the class of those authorized to perform an audit, Contractor acknowledges that the State Comptroller (and its successor), the State Auditor General, and the Department's Inspector General may conduct audits. The following records are specifically excluded from inspection, copying, and audit rights under this Contract: (i) financial records of Contractor that are unrelated to this Contract, (ii) documents created by and for the State or other communications related thereto that are confidential attorney work product or subject to attorney-State privilege, unless those documents would be required to be produced for inspection and copying by the State under the requirements of Chapter 119, Florida Statutes, and section 24, Article I of the Florida Constitution, (iii) information of Contractor that is confidential, proprietary, or is a trade secret, and (iv) personal and financial data exchanged as required by this Contract, to the extent generally protected by law. Contractor shall be responsible for any taxes or any other liabilities imposed as a result of such audits and inspections. The State will use reasonable efforts to minimize the number and duration of such audits or inspections conducted and conduct such audits and inspections in a manner that will minimize the disruption to Contractor's business operations. The State shall be responsible for the costs associated with the audit review. Information disclosed during any such audit is subject to the requirements of Chapter 119, Florida Statutes, and section 24, Article I of the Florida Constitution.

## Section 5

## Damages for Delay

Contractor acknowledges that its failure to meet an agreed upon deadline for delivery of services other than brokerage services will damage the Eligible Users but that by their nature such damages are impossible to ascertain presently and will be difficult to ascertain in the future. The issues involved in determining the amount of damages will be multiple and complex, and will be dependent on many and variant factors, proof of which would be burdensome and require lengthy and expensive litigation, which the Parties desire to avoid. Accordingly, the Parties agree that it is in the Parties' best interests to agree upon a reasonable amount of liquidated damages, which are not intended to be a penalty and are solely intended to compensate for unknown and unascertainable damages

Accordingly, liquidated damages shall be assessed on the Contractor at a rate of \$100.00 per calendar day for each calendar day the Contractor fails to complete agreed upon work after expiration of the time allowed by the State or Eligible User, subject to the *force majeure* provisions of section 9 below. Regardless of whether the time for completion of work (other than brokerage services) is stipulated in hours, calendar days, working days or business days, delay days shall be counted in calendar days. Allowing Contractor to finish the work, or any part of it, after the expiration of the time allowed, including extensions of time granted to Contractor, shall in no way act as a waiver of the liquidated damages due under this Contract.

Nothing in this section shall be construed to make Contractor liable for delays that are beyond its reasonable control. Nothing in this section shall limit the Eligible Users' right to pursue its remedies for other types of damages.

## Section 6 Insurance

### 6.1. Insurance Coverage.

#### 6.1.1. General Requirements.

No later than five (5) calendar days after execution of this Contract, Contractor shall, at its own expense, secure and maintain the insurance coverage outlined below. This Contract shall not limit the types of insurance Contractor may desire to obtain or be required to obtain by law. The limits of coverage under each policy shall not be interpreted as limiting Contractor's liability and obligations under this Contract. Providing and maintaining adequate insurance coverage is a material obligation of Contractor and is of the essence of this Contract. Performance may not commence on this Contract until such time as insurance is secured by Contractor and approved by the Department. Such approval will not be unreasonably withheld or delayed.

A certificate reflecting the continuing coverage of all such policies shall be delivered to the Department prior to the time such insurance is required and at least thirty (30) days prior to the expiration of any such policies. Such policies shall bear an endorsement stating that the insurer agrees to notify the Department not less than thirty (30) days in advance of the effective dates of any change in coverage or cancellation. All insurance carriers shall be, at the minimum, rated "A VII" by A.M. Best or an equivalent rating by a similar insurance rating service.

Contractor is responsible for first dollar defense coverage. All general liability policies shall provide defense in addition to the policy limits. In respect to the total limits of liability required, any combination of primary and/or umbrella coverage may satisfy those totals. However, if an umbrella is used, coverage must be at least as broad as the primary coverage. Also, all of the policies set forth below shall contain an endorsement stating that coverage's are primary to the extent Contractor is liable under the Contract.

#### 6.1.2. Commercial General Liability.

Contractor shall have comprehensive general liability insurance against any and all claims for injuries to persons or damage to property. Such insurance shall have combined single limits, per occurrence of not less than one million dollars (\$1,000,000), and not less than two million dollars (\$2,000,000) in the aggregate. Said insurance shall include coverage for operations and shall name the State as additional named insured.

**6.1.3. Workers' Compensation Insurance.**

Contractor shall have Workers' Compensation Insurance for all employees connected with the Services. Such insurance shall comply fully with the Florida Workers' Compensation law.

**6.1.4. Comprehensive Automobile Liability.**

Contractor shall have contractual coverage and automobile liability coverage for owned, hired, and non-owned vehicles, and equipment. The policy shall have combined single limits, per occurrence, for bodily injury and property damage of not less than one million dollars (\$1,000,000).

**6.1.5. Professional Liability Insurance.**

Contractor shall have professional liability insurance coverage, including errors and omissions coverage, to cover all professional services to be provided by Contractor under this Contract. The amount of coverage obtained shall be one million dollars (\$1,000,000) per occurrence with a two million dollar (\$2,000,000) yearly aggregate. If occurrence coverage is not available, claims-made coverage with a three-year tail coverage shall be provided for the same amounts and aggregate as detailed above.

**6.2. Subcontractor Insurance Coverage.**

Contractor shall require each of its subcontractors to secure and maintain the insurance coverage's set forth in subparagraphs 6.1.2, 6.1.3 and 6.1.4 above except that Contractor shall also be a named insured. Such coverage may be reduced or waived when approved in writing by the Contract Manager with the consent of the Department since certain subcontractors have potentially less exposure in liability than other subcontractors, depending on the nature of their work under this Contract. In no event may a subcontractor self-insure unless it obtains the prior written consent of the Department.

**6.3. Deductible Amounts.**

Contractor may choose the amount of deductible for any of the insurance coverage required above, but in no event shall such deductible for each occurrence exceed \_\_\_ percent of the required yearly aggregate limit of coverage. *[If blank, the limit will be 5%].*

**6.4. Self-Insurance.**

Except as agreed in a separate writing, no "self-insurance" coverage shall be acceptable unless Contractor is licensed or authorized to self-insure for a particular coverage in the State of Florida, or is an insured member of a self-insurance group that is licensed to self-insure in the State of Florida.

**Section**  
**7**

**Default and Remedies**

**7.1. Contractor Events of Default.**

The following list is non-exhaustive. Any one or more of the following events shall constitute an "Event of Default" on the part of Contractor:

- (a) Contractor fails to pay any sum of money required hereunder within thirty (30) calendar days after receipt of written notice that the same is due; or

- (b) Contractor fails to provide the Services required under this Contract or fails to meet any of the performance metrics established in accordance with Section 2; or
- (c) Contractor employs an unauthorized alien in the performance of any work under this Contract; or
- (d) Contractor fails to correct Contractor's work that the State has rejected as unacceptable or unsuitable; or
- (e) Contractor unilaterally discontinues the performance of the work required under this Contract; or
- (f) Contractor fails to resume work that has been discontinued within a reasonable time after notice to do so; or
- (g) Contractor fails to promptly pay any and all taxes or assessments imposed by and legally due the State or federal government; or
- (h) Contractor made or has made a material misrepresentation or omission in any materials provided to State; or
- (i) Contractor commits any material breach of this Contract; or
- (j) Contractor transfers ownership in violation of this Contract; or
- (k) Contractor utilizes a subcontractor in the performance of the work required by this Contract which has been placed on the State's Convicted Contractors List; or
- (l) Contractor is suspended or is removed as an authorized contractor by any state or federal agency or Contractor is convicted of a felony.

## 7.2. State Remedies in the Event of Default.

If Contractor commits an Event of Default, the Department shall provide Contractor with written notice (by regular mail, hand delivery, overnight delivery, email, facsimile, or any other reasonable means), stating the nature of the default and providing a time certain for correcting it. The notice will also provide that, should Contractor fail to perform within the time provided, Contractor will be found in default and removed from the Department's approved vendor list. Unless Contractor corrects its failure to perform within the time provided, or unless the Department determines on its own investigation that the Contractor's failure is legally excusable, the Department shall find Contractor in default and shall issue a second notice stating (i) the reasons Contractor is considered in default, (ii) that the Department will reprocure or has reprocured the commodities or services, and (iii) the amount of the reprocurement costs if known. Reprocurement costs may include both administrative costs and costs or price increases incurred or to be incurred as a result of the reprocurement.

The time allowed for correcting an Event of Default shall be ten (10) calendar days after receipt of written notice thereof; provided, however, if the obligation is of a nature that it could not reasonably be performed within ten (10) calendar days, such 10-day period may, at the Department's discretion, be extended so long as the Contractor begins performance within such 10-day period and thereafter diligently and continuously pursues performance, all being subject to Force Majeure.

If Contractor fails to correct an Event of Default, the State is entitled to any one or all of the following remedies:

- (a) Termination of this Contract, in whole or in part, with Contractor being entitled to payment only for completed Services (not for any pending lease transactions).
- (b) Termination of any or all other contracts with Contractor.

- (c) Pursuit of equitable relief and/or damages against Contractor to collect any actual damages, hold-over rents, liquidated damages, reprocurement costs, or other sums owed by Contractor hereunder.

Except for defaults of Contractor's subcontractors at any tier, Contractor shall not be liable for any damages if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both Contractor and the subcontractor, and without the fault or negligence of either, Contractor shall not be liable for any damages for failure to perform, unless the subcontracted services or supplies were reasonably obtainable from other sources in sufficient time for Contractor to meet the required delivery schedule. If, after termination, it is determined that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Department. The rights and remedies of the Department in this clause are in addition to any other rights and remedies provided by law or under this Contract.

### 7.3. State Events of Default.

Any one or more of the following events shall constitute an "Event of Default" on the part of the State:

- (a) The State fails to timely pay all non-disputed amounts due under this Contract. The cure period for failure to pay shall be forty-five (45) calendar days from receipt of notice of failure to pay, unless State law allows a longer period to pay; or
- (b) The State breaches any other material obligation under this Contract. The cure period for a material breach by the State shall be forty-five (45) calendar days from receipt of notice of material breach.

### 7.4. Contractor Remedies in the Event of Default.

If the State fails to cure an Event of Default within the prescribed time, then the Contractor shall provide the State with a second written notice ("Termination Notice") reciting that Contractor intends to pursue termination of this Contract. The Termination Notice will not be effective unless it references this subsection 7.4. If the State fails to cure the Event of Default within ninety (90) calendar days from receipt of the Termination Notice, then the Contractor may terminate the Contract and recover the costs it actually incurred for authorized Services satisfactorily performed. To recover such costs, Contractor shall submit to the Department, within sixty (60) calendar days of termination, a request for payment of such amounts. Requests submitted later than sixty (60) calendar days after termination will not be honored and will be returned unpaid. In the event of termination, the Contractor shall work with the State in good faith to phase out the Services pursuant to section 8.5 below.

### 7.5. Exclusive Remedies.

The remedies provided and available to the State and Contractor in this Contract shall be (i) the exclusive remedies hereunder; (ii) in lieu of all other claims for reimbursement or payment, including but not limited to lost profits, consequential or indirect damages, office overhead, or costs for accelerating performance; and (iii) distinct, separate and cumulative remedies such that the election of one remedy shall not be construed as a waiver of any other remedy.



## 7.6. State May Cure Contractor Defaults.

If Contractor commits an "Event of Default" in the performance of any term, provision, covenant or condition on its part to be performed hereunder, the State may, upon notice to Contractor after the expiration of any curative periods for which provision is made in this Contract, perform the same for the account and at the reasonable expense of Contractor. If, at any time and by reason of such default, the State is compelled to pay, or elects to pay, any sum of money or do any act which will require the payment of any sum of money, or is compelled to incur any expense in the enforcement of its rights hereunder or otherwise, such sum or sums, with a rate of interest if not established herein then as statutorily set by the State Comptroller (or successor), which together shall be repaid to the State by Contractor promptly when billed therefor.

## Section 8

## Termination Provisions

### 8.1. Term and Renewal.

The "Term" of this Contract shall be for a five (5) year period commencing upon the Effective Date. Subject to Chapter 287 of the Florida Statutes, and upon mutual written agreement, the Parties may renew the Contract, in whole or in part, for a total period not exceed 5 years on the same terms, conditions and prices set forth herein. Any renewal shall be in writing and signed by both parties. The Department shall provide written notice to Contractor regarding its intent to renew this Contract at least thirty (30) days prior to expiration. The Department shall rely on several factors in making the determination to renew including, but not limited to, satisfactory performance evaluations by the Department and the availability of funding. This Contract may not be renewed if Contractor has failed to substantially comply with any of the Contract requirements.

Upon the effective date of termination of this Agreement for any reason, the authority created hereby shall immediately cease, and Contractor shall have no further right to act as agent for the Department or otherwise perform or be paid for any Lease Transaction Services with respect to the period following the effective date of such termination.

Within fifteen (15) days subsequent to expiration or termination of this Agreement, Contractor shall furnish the Department, in writing (i) a list of prospects/landlords with whom Contractor has been negotiating a Lease Transaction, (ii) identification of the properties under consideration by each of the aforesaid prospects, and (iii) identification of the Eligible User. In the event a prospect appearing on the list enters into a contract subsequent to the date of said expiration or termination and a commission would otherwise be due, Contractor shall be entitled to receive a commission as provided herein, but only if the RSN is approved before the date of expiration or termination of this Agreement. If Contractor fails to provide such a list to the Department within fifteen (15) days subsequent to the date of expiration or termination the Department shall not be liable for any such compensation.

### 8.2. Suspension of Work.

The Department may in its sole discretion suspend any or all activities under this Contract, at any time, when in the best interests of the State to do so. The Department shall provide Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, Contractor shall comply with the notice. Within ninety (90) days, or any longer period

agreed to by Contractor, the Department shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate this Contract in accordance with Section 8.3. Suspension of work shall not entitle Contractor to any additional compensation.

### 8.3. Termination for Convenience.

The Department, by written notice to Contractor, may terminate the Contract in whole or in part when the Department determines in its sole discretion that it is in the State's interest to do so. Contractor shall not perform any Services after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any.

If this Contract is terminated for convenience, the Department shall: (1) notify the contractor and shall, (2) notify all Eligible Users. For all work in progress, Eligible Users that have entered into contracts may choose to allow the contractor to complete current contracted work at agreed upon costs/rates and time frames or the Eligible User may cancel services being rendered. Should an Eligible User cancel work in progress the Eligible User shall reimburse Contractor for reasonable costs actually incurred in connection with the work. Contractor shall submit to the Eligible User, within sixty (60) calendar days of termination, a request for payment of such amounts. Requests submitted later than sixty (60) calendar days after termination will not be honored and will be returned unpaid.

### 8.4. Termination for Cause.

This Contract may be terminated for cause pursuant to Section 7 above.

### 8.5. Interim Services.

For a period of up to one hundred eighty (180) days after termination of the Contract, the Department may elect to purchase Interim Services from Contractor. Interim Services shall mean all of the same Services provided by Contractor in the month immediately preceding the termination. The Department shall pay Contractor for such Interim Services at a rate equal to the amount the Department paid the Contractor during the month immediately preceding termination of the Contract for those Services. Each month, Contractor shall provide the Department with a proper invoice, in accordance with Section 4, for the Services provided during the previous month. Contractor agrees to provide sufficient experienced personnel during the period of time Interim Services are being performed to support the State. If the scope of Services needed by the Department is reduced by the Department, Contractor agrees to negotiate in good faith on a reduction of the costs charged the Department for Interim Services.

## Section 9

## General Provisions

### 9.1. Advertising.

Contractor shall not publicly disseminate any information concerning this Contract without prior written approval from the Department, including, but not limited to mentioning this Contract in a press release or other promotional material, identifying the Department or the State as a reference, or otherwise linking Contractor's name and either a description of this Contract or the name of the State or the Department in any material published, either in print or electronically, to anyone except potential or actual authorized subcontractors.

## 9.2. Annual Appropriations.

The State's performance and obligation to pay under this Contract are contingent upon an annual appropriation by the Legislature.

## 9.3. Assignment; Change of Control.

Contractor shall not sell, assign, or transfer any of its rights, duties or obligations under this Contract, or under any Purchase Order, without the prior written consent of the Department. The Department may assign the Contract with prior written notice to Contractor of its intent to do so.

Contractor agrees not to transfer more than 49.9% of its interests without prior written notice to the Department. By execution of this Contract, Contractor represents that it has no knowledge of any plan to transfer more than 49.9% of its interests.

## 9.4. Antitrust Assignment.

Contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State. Therefore, Contractor hereby assigns to the State any and all claims for such overcharges as to goods, materials, or services purchased in connections with this Contract.

## 9.5. Compliance with Laws.

Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority, including Section 475.278, Section 255.25, and Chapter 287 of the Florida Statutes and Chapters 60A-1 and 60H of the Florida Administrative Code. By way of further non-exhaustive example, Contractor shall comply with section 247A(e) of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of such laws shall be grounds for Contract termination.

Any changes in existing statute or regulation, or the promulgation of new regulations or the issuance of new statutes, shall not entitle Contractor to any extension of time, term, or increase in compensation. Upon mutual agreement, the Parties may amend the Contract in response to any changes.

## 9.6. Dispute Resolution.

The Parties acknowledge that efforts should always be made to avoid disputes through good communication and prompt requests for clarification and information. However, if a dispute arises under this Contract involving a State government entity, the Parties agree that the following procedures shall be the sole and exclusive procedures for resolution.

- (a) Executive Level Negotiations. The Contractor and the Eligible User will attempt in good faith to resolve any dispute arising out of or relating to this Contract (a "Dispute"), promptly by negotiation between executives of each side who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of the Services at issue. The Department's Director of Real Estate Development and Management shall be included in the negotiations to help mediate the Dispute. To the extent permitted by law, all negotiations shall be treated as confidential settlement negotiations for purposes of discovery and admissibility in a later legal action.

- (b) Legal Action. The Contractor and Eligible User will allow for at least thirty (30) days of executive level negotiations, commencing on the date the aggrieved party provides formal notice of the Dispute to the other party. If a Dispute is not resolved within this timeframe, the Eligible User shall reduce its decision to writing and serve a copy on Contractor. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, Contractor files with the Eligible User a petition for administrative hearing. The Eligible User's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.
- (c) Venue; Governing Law; Waiver of Jury Trial. The exclusive venue of any legal or equitable action that arises out of or relates to this Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.

This Section shall survive termination of this Contract.

## 9.7. Cooperative Purchasing.

Pursuant to their own governing laws, and subject to the agreement of Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Such purchases are independent of this Contract, and the Department shall not be a party to any transaction between the Contractor and any other purchaser. Notwithstanding the foregoing, Contractor shall report and pay the fee as required by Section 4.2.3 for all transactions accomplished through the establishment of this Contract.

## 9.8. Force Majeure, Notice of Delay, and No Damages for Delay.

Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond Contractor's control. In case of any delay Contractor believes is excusable, Contractor shall promptly notify the Department in writing of the delay or potential delay and describe the cause of the delay. No claim for damages, other than for an extension of time, shall be asserted against the Department. Contractor shall 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 arising because of delay, disruption, interference, or hindrance from any cause whatsoever.

## 9.9. Employment Eligibility Verification.

Pursuant to state of Florida Executive Order No.: 11-116, Contractor is required to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by the Contractor during the Contract term. Also, Contractor shall include in related subcontracts a requirement that subcontractors performing work or providing services pursuant to this Contract utilize the E-Verify system to verify employment of all new employees hired by the subcontractor during the Contract term.

## 9.10. Further Assurances.

The Parties will, without any additional consideration, execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Contract.

## 9.11. Indemnification.

Contractor hereby assumes entire responsibility and liability for any and all damages or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether employees of Contractor or otherwise, and to all property caused by, resulting from, arising out of or occurring in connection with any wrongful act or omission of Contractor, Contractor's employees, or Contractor's agents in connection with this Contract. If any claims for such damage or injury are made or asserted, Contractor agrees to indemnify, defend, and save harmless, the State, its officers, agents, servants, and employees from and against any and all such claims, and further from and against any and all loss, cost, expense, liability, damage, or injury, including legal fees and disbursements, that the State, its officers, agents, servants, or employees may directly or indirectly sustain, suffer, or incur as a result thereof. Upon request, Contractor shall assume the defense of any action at law or in equity which may be brought against the State, its officers, agents, servants or employees, arising by reason of such claims and shall pay the amount of any judgment that may be entered against them, individually, jointly or severally, in any such action.

Contractor also agrees to assume responsibility for, hold harmless, defend, and indemnify the State for payment of any expenses, costs (including delay costs), damages, penalties, taxes or assessments, including counsel fees and costs of defense, which may be imposed or incurred (a) under any Federal, State, or local law, ordinance or regulation with respect to any compensation of any person employed by Contractor; (b) under any Federal, State, or local law, ordinance or regulation with respect to discrimination in employment by Contractor on the basis of race, color, religion, sex, or national origin; (c) under any Federal, State, or local law, ordinance or regulation with respect to any claims or civil actions alleging deprivation of right, privilege, or immunity secured by the United States Constitution and laws pursuant to 42 USC Section 1983; and (d) under any Federal or State law relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right.

Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.

## 9.12. Right of Setoff.

The State may, in addition to other remedies available to it at law or equity and upon notice to 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 the State. The State may set off any liability or other obligation of Contractor or its affiliates to the State against any payments due Contractor under any contract with the State.

## 9.13. Independent Contractor Status of Contractor.

Contractor, together with its agents, subcontractors, officers and employees, shall have and always retain under this Contract the legal status of an independent contractor, and in no manner shall they be deemed employees of the State or deemed to be entitled to any benefits associated with such employment. During the term of this Contract, Contractor shall maintain at its sole expense those benefits to which its employees would otherwise be entitled to by law, including health benefits, and all necessary insurance for its employees, including workers' compensation, disability, and unemployment insurance, and provide

the Department with certification of such insurance upon request. Contractor remains responsible for all applicable federal, state, and local taxes, and all FICA contributions.

#### 9.14. Lobbying and Integrity.

Contractor represents that it did not lobby the legislative, judicial or executive branches, including any State Agency, on any aspect of this Contract during the procurement process (i.e., from the time the Contract solicitation documents were released until this Contract was executed). Any misrepresentation in this regard may constitute grounds for the disqualification of Contractor and termination of this Contract.

In accordance with Section 216.347, Florida Statutes, Contractor may not expend any State funds for the purpose of lobbying the legislative, judicial or executive branches, or any State agency. This restriction does not apply to actions taken by Contractor to provide any information relating to any aspect of this Contract, if requested by legislative, judicial or executive branch, or any State agency.

Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer 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 any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

Upon request of the Department's Inspector General, or other authorized State official, Contractor shall provide any type of information the Inspector General deems relevant to Contractor's integrity or responsibility. Such information may include, but shall not be limited to, Contractor's business or financial records, documents, or files of any type or form that refer to or relate to this Contract. Contractor shall retain such records for at least three years after the expiration of the Contract. Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

#### 9.15. Loss of Data.

In the event of loss of any State Data or record where such loss is due to the negligence of Contractor or any of its subcontractors or agents, Contractor shall be responsible for recreating such lost Data in the manner and on the schedule set by the Department, in addition to any other damages the State may be entitled to by law or this Contract.

#### 9.16. Notices.

All notices under this Contract shall be served upon the Department by certified mail, return receipt requested, by reputable courier service, or delivered personally to each of the following:

**Department of Management Services**  
Christina Espinosa, Contract Administrator  
Departmental Purchasing  
4050 Esplanade Way, Suite 335 Tallahassee, FL 32399-0950

**Department of Management Services**  
Beth Sparkman, Bureau Chief  
Division of Real Estate Development and Management  
4050 Esplanade Way, Suite 315E  
Tallahassee, FL 32399-0950

All notices under this Contract to be served upon Contractor shall be served by certified mail, return receipt requested, by reputable courier service, or delivered personally to:

**CBRE, Inc.**  
William Gulliford, III, Managing Director  
225 Water Street, Suite 110  
Jacksonville, Florida 32202

And copied to:

**CBRE, Inc.**  
Lee Ann Korst, Account Director  
311 E. Park Avenue  
Tallahassee, FL 32301

The Parties agree that any change in the above-referenced address or name of the contact person shall be submitted in a timely manner to the other Party. All notices and other communications under this Contract shall be in writing and shall be deemed duly given either (i) when delivered in person to the recipient named above, (ii) upon confirmation of courier delivery to the intended recipient, or (iii) three (3) business days after mailed by certified U.S. mail, return receipt requested, postage prepaid, addressed by name and address to the Party intended.

## 9.17. Public Records.

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

- (i) Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the service;
- (ii) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law;
- (iii) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law;

(iv) Meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the Contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements, and all records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.

The Department may unilaterally cancel this Contract for refusal by the Contractor to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt from s. 24(a) of Art. I of the State Constitution and section 119.07(1), Florida Statutes.

## 9.18. Rights to Contract Materials and Databases.

Contractor agrees that all documents and materials prepared by Contractor for purposes of this Contract shall be the sole property of the Department and shall be available to the Department at any time. Upon removal of references to Contractor, the Department shall have the right to use the same without restriction and without compensation to Contractor other than that specifically provided by this Contract.

Contractor shall provide the Department with all documents, materials, data, notes, photographs, files, recordings and any other material, regardless of the physical form, made or received in connection with the Services provided under this Contract. All electronic records must be provided in a format that is compatible with the information technology systems of the Department.

Except as expressly provided above, Contractor shall retain all right, title and interest in any and all intellectual property: (i) created by Contractor prior to this Agreement, including without limitation Contractor's proprietary software programs and processes for providing services; (ii) created by Contractor during the term of this Contract in the normal course of business for Contractor's clients generally.

## 9.19. Security and Confidentiality.

Contractor, and its employees, subcontractors and agents, shall comply fully with all security and administrative procedures and requirements of the State in performance of this Contract. Contractor, and all subcontractors and agents, may be required to provide certification on an annual basis that they, and their employees, have complied with all State and Department security and administrative procedures and requirements. The certification must be signed by an executive of each company.

Notwithstanding any provision of this Contract to the contrary, Contractor shall provide immediate notice to Department in the event it becomes aware of any security breach, any unauthorized access to State Data (even by persons or companies with legitimate access), any unauthorized transmission of State Data (whether or not to people with legitimate access to the data), or of any allegation or suspected violation of the above, regardless of its source.

Except as required by law or legal process and after notice to the Department, Contractor shall not divulge to third parties any confidential information obtained by Contractor or its agents, subcontractors, officers, or employees in the course of performing the Services, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State. Contractor shall not be required to keep confidential information or material that is publicly available through no fault of Contractor, material that Contractor developed independently without relying on the State's confidential information or material that is otherwise obtainable under State law as a public record. To ensure confidentiality, Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.



## 9.20. Accounting Records

The Contractor shall establish and maintain accounting records. The Contractor shall permit and shall require its contractors, subcontractors, and agents to permit the State's Auditor General or the Department's authorized representatives to, upon statutory or otherwise reasonable notice to the Contractor, and during normal business hours, inspect, and audit all work, books, accounts, materials, payrolls, and records pertaining to this Contract to ensure compliance with applicable laws and rules.

## 9.21. PUR 1000

The PUR 1000 (10/06) is incorporated into this Contract as terms and conditions.

## 9.22. Scrutinized Companies List

In executing this Contract, Contractor certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, Florida Statutes. Pursuant to section 287.135(5), Florida Statutes, the Contractor agrees the Department may immediately terminate the Contract for cause if the Contractor is found to have submitted a false certification or if the Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List during the term of the Contract.

## 9.23. Geographic Location Of Data And Services

The State of Florida requires that all Data generated, used, or stored by Contractor pursuant to the prospective Contract will reside and remain in the continental U.S. and will not be transferred outside of the continental U.S. The state of Florida also requires that all services provided under the Contract, including call center or other help services, will be performed by persons located in the continental U.S.

## 9.24. Waiver.

The delay or failure by a Party to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

## 9.25. Representations and Warranty of Ability to Perform.

Contractor represents that all written information relating to its ability and qualifications to perform the Services that was provided by Contractor to the Department in response to the Invitation to Negotiate No. DMS 12/13-007 dated March 18, 2013, remains true in all material respects. 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 Contractor's ability to satisfy its Contract obligations. Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. Contractor shall immediately notify the Department in writing if its ability to perform is compromised in any manner during the term of this Contract.

## 9.26. Entire Contract.

This Contract constitutes the full and complete agreement of the Parties and supersedes any prior contracts, arrangements and communications, whether oral or written, with respect to the subject matter hereof. Each Party acknowledges that it is entering into this Contract solely on the basis of the representations contained herein, and for its own purposes and not for the benefit of any third party.

As incorporated by reference the ITN as released and the Contractors full response to that action are part of this contract and are binding hereto.

## 9.27. Modification of Terms.

This Contract may only be modified upon mutual written agreement of the Department and Contractor. No oral agreements or representations shall be valid or binding upon the Department or Contractor. Contractor may not unilaterally modify the terms of this Contract by incorporating terms onto Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. The Department's acceptance of Service or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

Notwithstanding the above, the Department may unilaterally require, by written order, changes altering, adding to, or deducting from the Services, provided that such changes are within the general scope of the Contract. The Department may make an equitable adjustment in the Contract price or schedule if the change affects the cost or time of performance.

## 9.28. Severability.

If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent it is not in violation of law, or is not otherwise unenforceable, and all other provisions shall remain in full force and effect.

## 9.29. Execution in Counterparts; Authority to Sign.

This Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Each person signing this Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

THIS SPACE INTENTIONALLY LEFT BLANK.


SO AGREED:

**STATE OF FLORIDA, DEPARTMENT OF MANAGEMENT SERVICES**

By:   
Stacy Arias, Deputy Secretary

4.9.14  
Date

**CBRE, INC**

By:   
William Gulliford, Managing Director

4.8.14  
Date

THIS SPACE INTENTIONALLY LEFT BLANK.



**DMS Tenant Broker Contract (DMS 12/13-007A) Appendix 1:  
Tenant Broker Engagement Checklist**

Engagement Title:  
Eligible User:  
Contractor:

The Contractor and the Eligible User shall use this checklist (or other appropriate scope of work) to define and confirm all deliverables, and if the deliverable will be in written form and expected due dates. Eligible Users may add such information to this form as needed.

LEASE PRE-WORK		Is Required		Date Due
		Yes	No	
1.	Determine/validate desired boundaries against business drivers.			
2.	Determine/validate primary decision criteria for selection of an "award."			
3.	Present summary of market rates, vacancy and absorption (current and tend) as defined below: a. Scope of summary (e.g. within 5 miles, All class B, etc.) b. Period for trend data c. Additional market information requested			
4.	List all state owned and leased real property with a radius defined here, as reported on publicly available state database and all excess space available.  Radius: _____			
5.	Provide a written assessment identifying preliminary courses of action for lease with pro/con assessment and projected cost per occupant of each potential action.			
6.	Review and summarize subject lease action "fit" with recommendations in most recently submitted DMS Master Leasing Report and Strategic Leasing Plan.			
7.	Draft, review, and provide recommendations of any lease terms that may vary from approved lease forms (Section 60H-1.003, F.A.C.)			
8.	Draft, review, and provide recommendations of any lease terms that may vary from approved lease forms (Section 60H-1.003, F.A.C.)			
<b>PROCUREMENT</b>				
1.	Review and provide recommendations on, or draft, procurement documents.			
2.				
3.	Distribute procurement documents and associated notices as follows: _____			
4.	Assist the agency in responding to bidders questions.			
5.	Participate in bidder conferences/meetings.			
6.	Provide a written synopsis of each bid received to determine its adherence to the bid criteria and assist in the identification of "responsive" bids.			
7.	Create tour evaluation packages for site evaluators and conduct all site tours.			
8.	Provide an updated market rate analysis.			
9.	Serve as "Lead Negotiator" for the top site or site(s)			
10.	Provide updates on negotiation activities and interactions with bidders at following interval(s): _____			
11.	Provide summary of evaluations and recommended bidder to whom Eligible User should award in accordance with selection criteria.			
12.	Obtain a signed Commission Agreement.			
<b>LEASE EXECUTION</b>				
1.	Review and provide recommendations on, or draft, lease documents			
2.	Route lease documents to ensure complete execution			
<b>PROJECT CLOSE OUT</b>				
1.	Conduct lease transaction service close out review with Eligible User using Engagement Checklist to verify/validate completion of all agreed upon services.			



## DMS Tenant Broker Contract (DMS 12/13-007A)

### Appendix 2: Service Credit Hours Accounting Form

The Tenant Brokers shall use this form to provide a monthly accounting of credit hours

Year	Contract Service Credit Hours	Accrued Service Credit Hours
FY 2013-2014		
FY 2014-2015		
FY 2015-2016		
FY 2016-2017		
FY 2017-2018		
<b>Subtotal</b>		
<b>Total</b>		

Summary of Service Credit Hours Expended			
Description of Service	Eligible User	Date	Hours Used
<b>Total Hours Expended</b>			

<b>Remaining Available Credit Hours</b>	
---	--

By: \_\_\_\_\_

\_\_\_\_\_ Date

Print Name: \_\_\_\_\_



## DMS Tenant Broker Contract (DMS 12/13-007A) Appendix 3: Credit Hour Direct Order Request & Approval Form

The Tenant Brokers and the Eligible Users shall use this form to define and confirm the scope of work/services; propose the approach and work products to be delivered, as well as the credit hours that will be used to provide them; and provide authorization to provide the requested work or services.

If additional space is required to provide necessary detail and specificity within sections A or B below, other documents may be included within these section by explicit reference therein.

### Requested Service

A. Summary of Desired Work Product(S) / Service(S)	
<i>Eligible User Information</i>	[Name and Position/Title Agency]
<i>Short Descriptive Title for Work</i>	
<i>Scope of Work</i>	[Brief overview of services being requested]
<i>Specific Milestones or Deliverables</i>	
<i>Period of Performance</i>	

B. Tenant Broker Proposal to Accomplish Work	
<i>Proposed Work Breakdown</i>	
<i>Proposed Credit Hours Allocated</i>	
<i>Proposed Timeline</i>	
<i>Tenant Broker Information</i>	[Name and Position/Title Company]

C. DMS Acceptance & Authorization to Proceed	
<i>Approved to Proceed</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>Date</i>	
<i>Approver's Name &amp; Signature</i>	

**CONTRACT NO.: DMS-12/13-007A**  
**BETWEEN**  
**THE DEPARTMENT OF MANAGEMENT SERVICES**  
**AND**  
**CBRE, INC.**

**AMENDMENT NO.: 1**

**THE PARTIES** agree to amend Contract No. DMS-12/13-007A (the Contract), effective upon execution, as follows:

1. Section 2.3.1 Contractor Compensation, is replaced in its entirety to read as follows:

**2.3.1** There is no Contractor compensation in excess or in addition to those payments established herein for Services.

**2.3.1 Compensation for Lease Transaction Services and Portfolio Strategy Services.**

The compensation for performing the Lease Transaction Services allowed under this Agreement, Contractor shall receive either the Commission paid by the subject landlord through the Eligible User as indicated below. Payments shall be made based on the aggregate of each of the amounts of the gross base rent of the lease. (For example: a five (5) year lease (base term) with a total obligation of \$2,765,432 will have a commission bill as follows: the first \$0 - \$500,000 bills at 3.5%, the next \$500,001 - \$2,500,000 will bill at 3.25% and the last \$2,500,00 - \$2,765,432 will bill at 3.0%). All payments for lease transaction services as well as any other services procurement under this contract must be evidenced by either a purchase order or a two party written Commission Agreement.

**Table 1 - Commission Schedule**

Type of Lease Agreement Negotiated	Maximum Compensation Rate	
New leases <sup>1</sup>	Total Aggregate Gross Base Rent of the Base Term of the Lease as indicated above	Maximum Rate
	The first \$ 0 - \$ 500,000	3.50%
	The next \$ 500,001 - \$2,500,000	3.25%
	The next \$ 2,500,001 - \$4,500,000	3.00%
	The next \$ 4,500,001 - \$6,499,999	2.75%
	The next \$ 6,500,000 and over	2.50%
Lease renewal, lease modifications, stay-in-place lease, lease extension, lease expansion	2% of the rent to be paid for the term of the action. <sup>2</sup>	

<sup>1</sup> At DMS's discretion and approval, a lease that has been substantially restructured to decrease the effective rental rate for leased space, resulting in a notable reduction in the overall lease costs in accordance with the objectives established in the annual *Strategic Leasing Plan* can be considered a "new lease" for the purposes of compensation.

<sup>2</sup> If the existing lease term is incorporated in a new transaction, such term (or value) shall be excluded from the commission calculation.

Type of Lease Agreement Negotiated	Maximum Compensation Rate
All leases for warehouse, hangar or storage space	2% of the sum of the annual rent to be paid over the initial term of the lease for leases 0-5,000 square feet Leases over 5,001 square feet follow the new lease chart above.
Independent Market Analysis	\$ <u>225.00</u> per IMA
Broker Opinion of Value or a Broker Price Option - Undeveloped Properties*	\$ <u>500.00</u> per BOV/BPO
Broker Opinion of Value or a Broker Price Option - Developed Properties	\$ <u>250.00</u> per BOV/BPO

\*Undeveloped properties is defined a property that contains no structures.

Rates in excess of those established in Table 1 are not authorized.

Commissions received by the Eligible User on behalf of Contractor shall be paid to Contractor as indicated herein. However, under no circumstances shall Commissions become payable by Eligible User until such payments have been remitted to the Eligible User by the subject landlord.

Commission installments are paid as follows:

**New leases:**

50% upon full execution of the lease documents by the landlord the Eligible User and DMS; and 50% upon occupancy by the Eligible User of the leased premises.

**Renegotiated/Modified Leases:**

Should the lease be in the same location and thereby not requiring a move on the part of the Eligible User the commission shall be paid 100% at time of full lease execution by the landlord the Eligible User and DMS.

**All Other Actions**


Payment will be made as indicated on the purchase order or contract document.

2. This Amendment sets forth the entire understanding between the Parties with regard to the subject matter hereof. All other terms and conditions of the Contract and shall remain in full force and effect.




SO AGREED by the Parties' authorized representatives on the dates noted below:

DEPARTMENT OF MANAGEMENT SERVICES

  
Stacy Arias, Deputy Secretary  
7/29/14  
Date

CBRE, INC.

  
Signature  
William L. Sullivan, III  
Print Name and Title  
Managing Director  
July 14, 2014  
Date

**CONTRACT NO.: DMS-12/13-007A**  
**BETWEEN**  
**FLORIDA DEPARTMENT OF MANAGEMENT SERVICES**  
**AND**  
**CBRE, INC.**

**AMENDMENT NO.: 2**  
**(RENEWAL NO.: 1)**

This Amendment to Contract No.: DMS-12/13-007A (the "Contract") is by and between the State of Florida acting through the Florida Department of Management Services (the "Department") and CBRE, Inc. (the "Contractor"), collectively known as the "Parties"

Therefore, the Parties agree to amend the Contract as follows:

1. Pursuant to Section 8.1. Term and Renewal, the Contract is renewed for five (5) years beginning April 9, 2019, and ending April 8, 2024.
2. Section 9.17. Public Records, is hereby revised to add subitem (v) as follows:

**(v) 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 FOR THE CONTRACT MANAGER.**

3. Section 9.22. Scrutinized Companies List, is hereby revised to read as follows:

If the Contract exceeds \$1,000,000.00 in total, not including renewal years, Contractor certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List created pursuant to sections 215.473, F.S. and 215.4725 F.S., respectively, or is participating in a boycott of Israel. Pursuant to section 287.135(5), F.S., and 287.135(3), F.S., Contractor agrees the Department may immediately terminate the Contract for cause if the Contractor is found to have submitted a false certification or if Contractor is placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel during the term of the Contract.

4. Section 9.30. Cooperation with the Inspector General, is hereby incorporated into the Contract as follows:

**9.30. Cooperation with the Inspector General**

Pursuant to section 20.055(5), Florida Statutes, contractor and any subcontractors understand and will comply with their duty to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

5. This Amendment is hereby made a part of this Contract. All other terms and conditions of the Contract shall remain in full force and effect. Except as otherwise expressly set forth herein, the terms and conditions contained in the Contract and subsequent amendments are unchanged. This Amendment sets forth the entire understanding between the Parties with regard to the subject matter hereof.
6. This Amendment is effective April 9, 2019.

**SO AGREED** by the Parties' authorized representatives on the dates noted below:

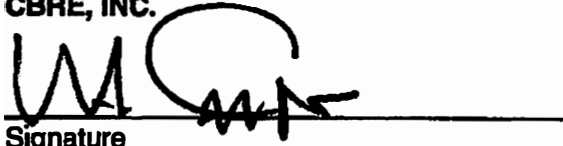
**FLORIDA DEPARTMENT OF MANAGEMENT SERVICES**



Tom Berger, Director  
Real Estate Development and Management

6/19/18  
Date

**CBRE, INC.**



Signature

William J. Gulliford III, Sr Managing Director  
Print Name and Title

6.18.18  
Date