

MyFloridaMarketPlace Service

When presented with the Terms of Use at Vendor registration, you, the Vendor, will be given an opportunity to click 'I Accept', which means you agree to the terms set out herein. If you click 'I Decline', your information will be retained for update by you; however, you will not be a registered Vendor in MyFloridaMarketPlace.

The Service Provider will provide customer support to you involving use of MFMP and for inquiries relating to the operation and hosting of MFMP, during the hours of 8 AM to 6 PM Eastern Standard Time. The following support services will be included: (i) a customer support telephone number (866-352-3776); (ii) a customer support email address (vendorhelp@myfloridamarketplace.com); and (iii) an online training feature to instruct you on conducting procurement through the Service (<http://www.dms.myflorida.com/mfmp/vendor/recordedtraining>).

Terms of Use

- 1. ACCEPTANCE OF TERMS** Welcome to MyFloridaMarketPlace ("MFMP"), the statewide eProcurement system implemented by the State of Florida, through the Department of Management Services ("State"), with the assistance of a third party agent ("Service Provider"). MFMP is provided to you, the Vendor, subject to the following Terms of Use ("TOU").
- 2. DESCRIPTION OF SERVICE** MFMP provides Vendors the ability to register with the State of Florida and conduct electronic commerce. Any new features that augment or enhance the current MFMP shall be subject to the TOU. You are responsible for obtaining access to and any expenses incurred in using MFMP.
- 3. TRANSACTION FEES** The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to section 287.057(24), Florida Statutes. All payments issued by agencies or Eligible Users to registered Vendors for purchases of commodities or contractual services shall be assessed Transaction Fees as prescribed by Rule 60A-1.031, Florida Administrative Code, or as may otherwise be established by law. Vendors shall pay the Transaction Fees and agree to automatic deduction of the Transaction Fees, when automatic deduction becomes available. Vendors shall submit any monthly reports required pursuant to the rule. All such reports and payments shall be subject to audit. Agencies will have grounds for declaring the vendor in default if the vendor fails to comply with the payment of the Transaction Fee or reporting of payments, which may subject the vendor to being suspended from business with the State of Florida.
- 4. YOUR ACCOUNT** In consideration of your use of MFMP, you agree to: (i) provide true, accurate, current and complete information about yourself as prompted by MFMP and (ii) maintain and promptly update the registration data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or if the State has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, the State has the right to suspend or terminate your account and refuse any and all current or future use of MFMP, or any portion thereof. You will receive a password and account designation upon completing MFMP's registration

process. You are responsible for maintaining the confidentiality of the password and account, and are fully responsible for all activities that occur under your password or account. You agree to (i) immediately notify Service Provider at 866-352-3776 or email vendorhelp@myfloridamarketplace.com of any unauthorized use of your password or account or any other breach of security, and (ii) ensure that you exit from your account at the end of each session. You are entirely responsible for all content that you upload, post, email, transmit, or otherwise make available to the State through MFMP. The State, its Service Provider, and any third party agents involved, directly or indirectly, in the delivery and operation of MFMP shall not be liable for any loss or damage arising from your use of MFMP.

- 5. OWNERSHIP** You acknowledge that State owns all right, title and interest in and to the entire contents of MFMP, including the underlying methodology, software and copyrightable structure of MFMP. As between you and the Service Provider, the Service Provider is the exclusive owner or licensee of any and all copyrights, trademarks, and any other intellectual property right relating to MFMP. The State and its Service Provider grant you a non-exclusive, non-transferable license to access and use MFMP in accordance with this Agreement. The State and its Service Provider also grant you a non-exclusive, non-transferable license to print and download content on MFMP solely for your non-commercial use, provided that you maintain the copyright notice and any other notices that appear on any such copies.
- 6. PUBLIC RECORDS** To the extent required by the Florida Public Records Act, Chapter 119, F.S., the Vendor shall maintain and allow access to public records made or received in conjunction with MFMP. MFMP may be unilaterally cancelled by the State for the Vendor's refusal to allow access to public records.
- 7. MODIFICATIONS** The State reserves the right at any time to modify MFMP with or without notice. You agree that the State and its agents (including the Service Provider) shall not be liable to you or to any third party for any modification or suspension of MFMP.
- 8. TERMINATION**
 - A.** Once you have accepted the TOU, an Agreement has been created between you and the State for use of MFMP. You are bound by the terms of these TOUs until such time as you terminate your Agreement with the State by submitting a written request via email and receive confirmation from the State.
 - B.** The State, in its sole discretion, may terminate your password, account (or any part thereof) or use of MFMP, and remove and discard any content within MFMP, at any time with or without cause, for any reason, including, without limitation, for lack of use or if you have violated or acted inconsistently with the TOU. You agree that any termination of your access to MFMP under any provision of this TOU may be effected, using the contact information currently available, and acknowledge and agree that the State may deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or MFMP. You agree that the State and its agents (including the Service Provider) shall not be liable for damages or remedies in any form to you or any third party for any termination of your access to MFMP.
 - C. Effect of Termination:** The TOU shall survive termination of this agreement as to any outstanding transactions.

9. OUTAGE There may be website outages where MFMP cannot be accessed. The State will use reasonable efforts to make MFMP available, except for downtime for scheduled and unscheduled maintenance, and will promptly investigate any technical problems that you report to us.

10. INDEMNITY Vendor agrees to indemnify, defend, and hold the State, its officers and employees involved, directly or indirectly, in the delivery and operation of MFMP, and the Service Provider harmless from any and all liabilities and expenses, including, without limitation, attorney's fees, expenses, costs, judgments, settlements, contract losses, or other costs arising out of or relating to (i) Vendor's use of, or misuse or modification of the MFMP or the State's sites; (ii) the Vendor's distribution, marketing or use for the benefit of parties other than Vendor of MFMP or the State of Florida's sites; (iii) Product information, direction, specification or materials provided by Vendor; (iv) Vendor's transactions with Buyers; and (v) Vendor's breach of any of its representations, warranties, promises or obligations under this Agreement.

To the extent permitted by Florida law, the Vendor agrees to indemnify, defend, and hold the State, its officers, employees, Service Provider and agents harmless from all fines, claims, assessments, suits, judgments, or damages, consequential or otherwise, including court costs and attorney's fees, arising out of any acts, actions, breaches, neglect or omissions of the Vendor, its employees, agents, subcontractors, assignees or delegates related to this Agreement. This Agreement does not constitute a waiver of sovereign immunity or consent by the State to suit by third parties.

11. DISCLAIMER OF WARRANTIES You expressly understand and agree that:

- A.** Your use of MFMP is at your sole risk. MFMP is provided on an "as is" and "as available" basis. The State expressly disclaims all warranties of any kind.
- B.** The State makes no warranty that (i) MFMP will meet your requirements; or (ii) MFMP will be uninterrupted, timely, or error-free.
- C.** Any material downloaded or otherwise obtained through the use of MFMP is done at your own discretion and risk and you shall be solely responsible for any damage to your computer system or loss of data that results from the download of any such material.
- D.** No advice or information, whether oral or written, obtained by you from MFMP shall create any warranty.
- E.** Each party warrants that (a) it is authorized, empowered, and able to enter into and fully perform its obligations under this Agreement; and (b) its performance of this Agreement, and the other party's exercise of such other party's rights under this Agreement, will not conflict with or result in a breach or violation of any of the terms or provisions or contribute a default under any Agreement to which it is a party.

12. LIMITATION OF LIABILITY You expressly understand and agree the State, including its officers, employees, Service Provider and third party agents involved, directly or indirectly, in the delivery and operation of MFMP, shall not be liable for any direct, indirect, incidental, special, consequential or punitive damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if the State has been advised of

the possibility of such damages), resulting from: (i) the use or the inability to use MFMP; (ii) unauthorized access to or alteration of your transmissions or data; (iii) statements or conduct of any third party on MFMP; or (iv) any other matter relating to MFMP.

13. ASSIGNMENT The Vendor shall not sell, assign or transfer any of its rights, duties or obligations under the TOU without the prior written consent of the State. In the event of any assignment, the Vendor remains secondarily liable for performance of the TOU, unless the State expressly waives such secondary liability.

14. WAIVER The delay or failure by the State to exercise or enforce any of its rights under this TOU shall not constitute waiver of such rights.

15. SEVERABILITY Should a court determine any provision of this TOU is invalid, the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the TOU did not contain the provision held to be invalid.

16. GOVERNING LAW AND VENUE The laws of the State of Florida shall govern this Agreement. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to this Agreement. Further, the Vendor hereby waives any and all privileges and rights relating to venue it may have under Chapter 47, F.S., and any and all such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those grounded on convenience. The Vendor hereby submits to venue in the county chosen by the State of Florida.

17. 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.