

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: April 4, 2023

Consent

Regular

Ordinance

Public Hearing

Department: Risk Management

Submitted By: Risk Management

Submitted For: Employee Safety/Loss Control Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a one (1) year contract with DSS Sustainable Solutions USA, Inc., (DSS), for professional/consultation e-learning services with a retroactive commencement date of February 28, 2023 in the amount of \$72,552 for the first year, with four (4) automatic one (1) year renewals in the amount of \$71,772 annually, for a total not-to-exceed contract amount of \$359,640.

Summary: Risk Management has used e-learning as a training tool for many years to ensure County employees have all the necessary safety and health training in accordance with applicable regulations and County policies. Because this contract covers training, it is exempt from the Purchasing Code; however, Risk Management performed an extensive review of the marketplace including obtaining quotes from other vendors for like services. After this review, DSS was selected as the agency that best meets the County’s needs. This selection was based on quality of training, customization options, and overall cost. After the selection, Risk Management worked with DSS and the County Attorney’s Office to create a five (5) year contract that allows for annual opt-out options after sixty (60) days notice is given. The contract has a retroactive start date of approximately one month to allow for continuous service while the contract was being negotiated and brought to the BCC for final approval. As part of this Contract, the vendor requires the County to enter into a Support, Warranty & License Agreement that contains a limitation of liability provision different from the County’s standard requirements, which limits DSS’s liability to \$1,000,000. Risk Management and the County Attorney’s Office approved of the non-standard liability provision. Countywide (HH)

Background and Justification: Safety training is an essential part of Risk Management’s responsibilities. The methods of training delivery continue to evolve with technology. In addition, increased workloads have made e-learning a very desirable option for the County. The agreement with DSS will allow us to continue to provide this necessary training in the most cost-effective and efficient manner possible. As such, staff recommends approving this contract with DSS.

Attachments:

- 1. Contract for Consulting/Professional Services with DSS Sustainable Solutions USA, Inc.

Recommended By: _____

Department Director

3/9/2023
Date

Approved By: _____

Assistant County Administrator

3/20/2023
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2023 | 2024 | 2025 | 2026 | 2027 |
|---------------------------------------|----------|----------|----------|----------|----------|
| Capital Expenditures | | | | | |
| Operating Costs | \$72,552 | \$71,772 | \$71,772 | \$71,772 | \$71,772 |
| External Revenues | | | | | |
| Program Income (County) | | | | | |
| In-Kind Match (County) | | | | | |
| NET FISCAL IMPACT | \$72,552 | \$71,772 | \$71,772 | \$71,772 | \$71,772 |
| #ADDITIONAL FTE POSITIONS (CUMULATIVE | | | | | |

Is Item Included in Current Budget? Yes No

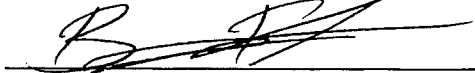
Does this item include the use of federal funds? Yes No

Budget Account No:

Fund 5011 Agency 700 Organization 7243 Object 3401

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review:



III. REVIEW COMMENTS:

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

*for review
8/13/23*

ASD/DA 3/13/23
OFMB QA 3/13

John J. Jacobus 3/17/23
Contract Dev. & Control
and 3/17/23

B. Legal Sufficiency

Helene C. Huzid 3-20-21
Assistant County Attorney

C. Other Department Review

Department Director

THIS (SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)

CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES

This Contract is made as of the 28th day of February, 2023, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY, and DSS SUSTAINABLE SOLUTIONS USA, INC., a foreign, for-profit entity authorized to do business in the State of Florida, hereinafter referred to as the CONSULTANT, whose Federal I.D. is 83-4566837.

In consideration of the mutual promises contained herein, the COUNTY and the CONSULTANT agree as follows:

ARTICLE 1 - SERVICES

The CONSULTANT'S responsibility under this Contract is to provide professional/consultation services in the area of e-learning Safety Courses, as more specifically set forth in the Scope of Work detailed in Exhibit "A".

The COUNTY'S representative/liaison during the performance of this Contract shall be Jean A. Heald, telephone no. (561) 233-5432.

The CONSULTANT'S representative/liaison during the performance of this Contract shall be Bryan Cimino, telephone no. (360) 624-3046.

ARTICLE 2 – ORDER OF PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Contract, excluding Exhibits; (2) Exhibit C to this Contract, License, (3) Exhibit A to this Contract, Scope of Work; (4) Exhibit B to this Contract, Schedule of Payments; .

ARTICLE 3 - SCHEDULE

The CONSULTANT shall commence services on February 28, 2023, and complete all services by February 27, 2024 (initial term). This Contract will automatically renew for four (4) consecutive one (1)-year terms (renewal terms) unless either party provides sixty (60) days written notice to the other party prior to the expiration of the initial term or a renewal term, of its intent not to renew.

Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in Exhibit A.

ARTICLE 4 - PAYMENTS TO CONSULTANT

- A. The total amount to be paid by the COUNTY under this Contract for all services and materials shall not exceed a total contract amount of THREE HUNDRED FIFTY-NINE THOUSAND, SIX HUNDRED AND FORTY DOLLARS (\$359,640), of which SEVENTY-TWO THOUSAND, FIVE HUNDRED FIFTY-TWO DOLLARS (\$72,552) will be budgeted for the initial term, with an anticipated SEVENTY-ONE THOUSAND, SEVEN HUNDRED SEVENTY-TWO DOLLARS (\$71,772) anticipated to be budgeted for each one (1)-year renewal term,. The CONSULTANT shall notify the COUNTY's representative in writing when 90%

of the "not to exceed amount" has been reached. The CONSULTANT will bill the COUNTY on a yearly basis, or as otherwise provided, at the amounts set forth in Exhibit B for services rendered toward the completion of the Scope of Work. Where incremental billings for partially completed items are permitted, the total billings shall not exceed the estimated percentage of completion as of the billing date.

- B. Invoices received from the CONSULTANT pursuant to this Contract will be reviewed and approved by the COUNTY's representative, to verify the license has been activated. Approved invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following date of CONSULTANT invoice.
- C. In order to do business with Palm Beach County, CONSULTANTS are required to create a Vendor Registration Account OR activate an existing Vendor Registration Account through the Purchasing Department's Vendor Self Service (VSS) system, which can be accessed at <https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService>. If CONSULTANT intends to use sub-consultants, CONSULTANT must also ensure that all sub-consultants are registered as consultants in VSS. All subcontractor agreements must include a contractual provision requiring that the sub-consultant register in VSS. COUNTY will not finalize a contract award until the COUNTY has verified that the CONSULTANT and all of its sub-consultants are registered in VSS.

ARTICLE 5 - PERSONNEL

The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required herein under shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONSULTANT'S key personnel, as may be listed in Exhibit "A", must be made known to the COUNTY'S representative.

The CONSULTANT warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

All of the CONSULTANT'S personnel (and all Subcontractors), while on COUNTY premises, will comply with all COUNTY requirements governing conduct, safety and security.

ARTICLE 6 - SUBCONTRACTING

The COUNTY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONSULTANT is encouraged to seek additional small business enterprises for participation in subcontracting opportunities. If the CONSULTANT uses any subcontractors on this project the following provisions of this Article shall apply:

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.

ARTICLE 7 - FEDERAL AND STATE TAX

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONSULTANT authorized to use the COUNTY'S Tax Exemption Number in securing such materials.

The CONSULTANT shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this contract.

ARTICLE 8 - AVAILABILITY OF FUNDS

The COUNTY'S performance and obligation to pay under this contract for subsequent fiscal years are contingent upon annual appropriations for its purpose by the Board of County Commissioners. The COUNTY will inform the CONSULTANT immediately should annual appropriations be discontinued for renewal terms. Should the COUNTY not make alternative payment arrangements in order to continue any remaining annual Terms, the CONSULTANT shall discontinue COUNTY access to the services as of the end of the last Term paid in full by COUNTY.

ARTICLE 9 - INSURANCE

The CONSULTANT shall maintain at its sole expense, in force and effect at all times during the term of this Contract, insurance coverage and limits (including endorsements) as described herein. Failure to maintain at least the required insurance shall be considered default of the Contract. The requirements contained herein, as well as COUNTY's review or acceptance of insurance maintained by CONSULTANT, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONSULTANT under the Contract. CONSULTANT agrees to notify the COUNTY at least ten (10) days prior to cancellation, non-renewal or material change to the required insurance coverage. Where the policy allows, coverage shall apply on a primary and non-contributory basis.

- A. Commercial General Liability: CONSULTANT shall maintain Commercial General Liability at a limit of liability not less than \$500,000 combined single limit for bodily injury and property damage each occurrence. Coverage shall not contain any endorsement(s) excluding Contractual Liability.

Additional Insured Endorsement: The Commercial General Liability policy shall be endorsed to include, "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees, and Agents" as an Additional Insured. A copy of the endorsement shall be provided to COUNTY upon request.

- B. Professional Liability: CONSULTANT shall maintain Professional Liability, or equivalent Errors & Omissions Liability, at a limit of liability not less than \$1,000,000 each occurrence, and \$1,000,000 per aggregate.

- C. Waiver of Subrogation: Except where prohibited by law, CONSULTANT hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for General Liability Policy.
- D. Certificates of Insurance: On execution of this contract, renewal, within forty-eight (48) hours of a request by COUNTY, and upon expiration of any of the required coverage throughout the term of this Agreement, the CONSULTANT shall deliver to the COUNTY or COUNTY's designated representative a signed Certificate(s) of Insurance evidencing that all types and minimum limits of insurance coverage required by this Contract have been obtained and are in force and effect. The County, through its Risk Management Department, retains the right to review the Certificates of Insurance to confirm the required policies of insurance are in place, including limits, coverage, or endorsements. Certificates shall be issued to:

Palm Beach County Board of County Commissioners

And may be addressed:

c/o Palm Beach County Risk Management Department
Using the address as indicated under "Notice" Article 26 below.

ARTICLE 10 - INDEMNIFICATION

CONSULTANT shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising out of claims that CONSULTANT'S unmodified Content infringes a valid intellectual property right of a third party; provided that CONSULTANT shall have received from the COUNTY: (a) prompt written notice of such claim; (b) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (c) all reasonably necessary cooperation to adjudicate the claim.

ARTICLE 11 - SUCCESSORS AND ASSIGNS

The COUNTY and the CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the CONSULTANT shall assign, sublet, convey or transfer its interest in this Contract without the prior written consent of the other.

ARTICLE 12 - REMEDIES

This Contract shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Contract will be held in a court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or

further exercise thereof.

No provision of this Contract is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Contract, including but not limited to any citizen or employees of the COUNTY and/or CONSULTANT.

ARTICLE 13 - CONFLICT OF INTEREST

The CONSULTANT represents that it presently has no known interest and shall acquire no known interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and the Palm Beach County Code of Ethics. The CONSULTANT further represents that no known person having any such conflict of interest shall be employed for said performance of services.

ARTICLE 14 - EXCUSABLE DELAYS

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONSULTANT or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.

Upon the CONSULTANT'S request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the CONSULTANT'S failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly, subject to the COUNTY'S rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 15 - ARREARS

The CONSULTANT shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 16 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent unless required by a lawful court order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the COUNTY'S expense shall be and remain the COUNTY'S property and may be reproduced and reused at the discretion of the COUNTY.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to

disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

Notwithstanding any other provision in this Contract, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of the Inspector General, Palm Beach County Code, Sections 2-421 - 2-440, as amended.

ARTICLE 17 - INDEPENDENT CONTRACTOR RELATIONSHIP

The CONSULTANT is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONSULTANT'S sole direction, supervision, and control.

The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The CONSULTANT does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

ARTICLE 18 - CONTINGENT FEES

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 19 - ACCESS AND AUDITS

The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Contract. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONSULTANT'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the CONSULTANT, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

ARTICLE 20 - NONDISCRIMINATION

The COUNTY is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the CONSULTANT warrants and represents that throughout the term of the Contract, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Contract.

As a condition of entering into this Contract, the CONSULTANT represents and warrants that it will comply with the COUNTY'S Commercial Nondiscrimination Policy as described in Resolution 2017-1770, as amended. As part of such compliance, the CONSULTANT shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the CONSULTANT retaliate against any person for reporting instances of such discrimination. The CONSULTANT shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the COUNTY'S relevant marketplace in Palm Beach County. The CONSULTANT understands and agrees that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification or debarment of the company from participating in COUNTY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONSULTANT shall include this language in its subcontracts.

ARTICLE 21 - AUTHORITY TO PRACTICE

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

ARTICLE 22 - SEVERABILITY

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 23 - PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 24 - MODIFICATIONS OF WORK

The COUNTY reserves the right to make changes in Scope of Work, to become effective at the beginning of the next renewal term with at least sixty (60) days prior notice of such changes, including alterations, reductions therein or additions thereto. Upon receipt by the CONSULTANT of the COUNTY'S notification of a contemplated change, the CONSULTANT shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the COUNTY of any estimated change in the completion date, and (3) advise the COUNTY if the contemplated change shall affect the CONSULTANT'S ability to meet the completion dates or schedules of this Contract.

If the COUNTY elects to make the change, the COUNTY shall initiate a Contract Amendment and the CONSULTANT shall not commence work on any such change until such written amendment is signed by the CONSULTANT and approved and executed on behalf of Palm Beach County.

ARTICLE 25 - NOTICE

All notices required in this Contract shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Melody Thelwell, Director
Purchasing, Palm Beach County
50 South Military Trail, Suite 110
West Palm Beach, FL 33415

With a copy to:

Scott Marting, ARM, CSP, Director Risk
Management, Palm Beach County 100 Australian
Ave
West Palm Beach, FL 33406

and

Palm Beach County Attorney's Office
301 North Olive Ave.
West Palm Beach, Florida 33401

If sent to the CONSULTANT, notices shall be addressed to:

DSS Sustainable Solutions USA, Inc.
ATTN : L&D Division
4023 Kennett Pike #282
Wilmington, DE 19807-2018

ARTICLE 26 - ENTIRETY OF CONTRACTUAL AGREEMENT

The COUNTY and the CONSULTANT agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 25- Modifications of Work.

ARTICLE 27 - CRIMINAL HISTORY RECORDS CHECK

CONSULTANT is providing online eLearning services only, no onsite presence will be provided during the Term of the Agreement. The CONSULTANT, CONSULTANT'S employees, subcontractors of CONSULTANT and employees of subcontractors shall comply with Palm Beach County Code, Section 2-371 - 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), for unescorted access to critical facilities ("Critical Facilities") or criminal justice information facilities ("CJI Facilities") as identified in Resolutions R2013-1470 and R2015-0572, as amended. The CONSULTANT is solely responsible for the financial, schedule, and/or staffing implications of this Ordinance. Further, the CONSULTANT acknowledges that its Contract price includes any and all direct or indirect costs associated with compliance with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the COUNTY.

This Contract may include sites and/or buildings which have been designated as either "critical facilities" or "criminal justice information facilities" pursuant to the Ordinance and above referenced Resolutions, as amended. COUNTY staff representing the COUNTY department will contact the CONSULTANT(S) and provide specific instructions for meeting the requirements of this Ordinance. Individuals passing the background check will be issued a badge. The CONSULTANT shall make every effort to collect the badges of its employees and its subcontractors' employees upon conclusion of the contract and return them to the COUNTY. If the CONSULTANT or its subcontractor(s) terminates an employee who has been issued a badge, the CONSULTANT must notify the COUNTY within two (2) hours. At the time of termination, the CONSULTANT shall retrieve the badge and shall return it to the COUNTY in a timely manner.

The COUNTY reserves the right to suspend the CONSULTANT if the CONSULTANT 1) does not comply with the requirements of County Code Section 2-371 - 2-377, as amended; 2) does not contact the COUNTY regarding a terminated CONSULTANT employee or subcontractor employee within the stated time; or 3) fails to make a good faith effort in attempting to comply with the badge retrieval policy.

ARTICLE 28 - REGULATIONS; LICENSING REQUIREMENTS

The CONSULTANT shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. CONSULTANT is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

ARTICLE 29 - SCRUTINIZED COMPANIES

- A. As provided in F.S. 287.135, by entering into this Contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725. Pursuant to F.S. 287.135(3)(b), if CONSULTANT is found to have been

placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Contract may be terminated at the option of the COUNTY.

- B. **When contract value is greater than \$1 million:** As provided in F.S. 287.135, by entering into this Contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria.

If the COUNTY determines, using credible information available to the public, that a false certification has been submitted by CONSULTANT, this Contract may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Contract shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of Contract renewal, if applicable.

ARTICLE 30 - PUBLIC RECORDS

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the CONSULTANT: (i) provides a service; and (ii) acts on behalf of the COUNTY as provided under Section 119.011(2) F.S., the CONSULTANT shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The CONSULTANT is specifically required to:

- A. Keep and maintain public records required by the COUNTY to perform services as provided under this Contract.
- B. Upon request from the COUNTY'S Custodian of Public Records, provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The CONSULTANT further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract, if the CONSULTANT does not transfer the records to the public agency.
- D. Upon completion of the Contract the CONSULTANT shall transfer, at no cost to the COUNTY, all public records in possession of the CONSULTANT unless notified by COUNTY'S representative/liaison, on behalf of the COUNTY'S Custodian of Public Records, to keep and maintain public records required by the COUNTY to perform the service. If the CONSULTANT transfers all public records to the COUNTY upon completion of the Contract, the CONSULTANT shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Contract, the CONSULTANT shall meet all applicable requirements for retaining public records. All records

stored electronically by the CONSULTANT must be provided to COUNTY, upon request of the COUNTY'S Custodian of Public Records, in a format that is compatible with the information technology systems of COUNTY, at no cost to COUNTY.

Failure of the CONSULTANT to comply with the requirements of this article shall be a material breach of this Contract. COUNTY shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. CONSULTANT acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

ARTICLE 31 - COUNTERPARTS

This Contract, including the exhibits referenced herein, may be executed in one or more counterparts, all of which shall constitute collectively but one and the same Contract. The COUNTY may execute the Contract through electronic or manual means. CONSULTANT shall execute by manual means only, unless the COUNTY provides otherwise.

ARTICLE 32 - E-VERIFY - EMPLOYMENT ELIGIBILITY

CONSULTANT warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended, and that it: (1) is registered with the E-Verify System (E-Verify.gov), and uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of CONSULTANT's subconsultants performing the duties and obligations of this CONTRACT are registered with the E-Verify System, and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

CONSULTANT shall obtain from each of its subconsultants an affidavit stating that the subconsultant does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. CONSULTANT shall maintain a copy of any such affidavit from a subconsultant for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this CONTRACT which requires a longer retention period.

COUNTY shall terminate this CONTRACT if it has a good faith belief that CONSULTANT has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If COUNTY has a good faith belief that CONSULTANT's subconsultant has knowingly violated section 448.09(1), Florida Statutes, as may be amended, COUNTY shall notify CONSULTANT to terminate its contract with the subconsultant and CONSULTANT shall immediately terminate its contract with the subconsultant. If COUNTY terminates this CONTRACT pursuant to the above, CONSULTANT shall be barred from being awarded a future contract by COUNTY for a period of one (1) year from the date on which this

CONTRACT was terminated. In the event of such contract termination, CONSULTANT shall also be liable for any additional costs incurred by COUNTY as a result of the termination.

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IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Contract on behalf of the COUNTY and CONSULTANT has hereunto set its hand the day and year above written.

ATTEST:

**JOSEPH ABRUZZO
CLERK AND COMPTROLLER**

By: _____
Deputy Clerk

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS:**

By: _____
Gregg K. Weiss, Mayor

WITNESS:

Signature

Name (type or print)

CONSULTANT:

DSS Sustainable Solutions, USA, Inc.

Company Name

DocuSigned by:

William Hendrickson

03/01/2023 | 9:21 PM EST

Signature

William Hendrickson

Typed Name

Managing Director

Title

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By *Helene C. Steyn*
County Attorney

**APPROVED AS TO TERMS
AND CONDITIONS**

By *[Signature]*
Department Director

**Exhibit A
License & Services Agreement
Order Form**

| | |
|------------------------------------|----------------------------------------------------------|
| Effective Date ("Effective Date"): | 02/28/2023 |
| Client Name ("Client"): | Palm Beach County Risk Management |
| Client Address: | 100 Australian Ave. Suite 200, West Palm Beach, FL 33406 |
| Billing Address: | 100 Australian Ave. Suite 200, West Palm Beach, FL 33406 |
| Agreement ID: | 805-1550-5 |
| Client ID Number: | 805-1550 |

| | | | |
|-------------------------|-------------------------------|-------------------------------------------------------------|--|
| Client Primary Contact: | | Client Billing Contact (if different than Primary Contact): | |
| Name: | Jean Heald | Name: | |
| Title: | Safety & Loss Control Manager | Title: | |
| Email: | JHeald1@pbcgov.org | *Email: | |
| Phone: | 561-233-5432 | Phone: | |

*NOTE: All invoices will be emailed to Client unless otherwise agreed by the parties.

| | |
|-------------------------------------------------|---------------------------------------------------------------------|
| Is Client exempt from applicable sales/VAT tax? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Federal Tax ID#/VAT # (if applicable): | |
| Is a Purchase Order ("PO") required? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| PO Number (if applicable): | |

| | | | |
|--------------------------|---------------------------------------------------------------|--------------------------|--------------------------------------------------------------------------------------------------------------------|
| URL: | https://pbc.litmos.com/ | Order Form Type: | <input type="checkbox"/> Net New <input checked="" type="checkbox"/> Renewal <input type="checkbox"/> Change Order |
| Agreement Term (Year(s): | One 1-year (Initial Term), with four 1-year auto-renewals. | Availability Start Date: | 02/28/2023 |
| | | Availability End Date: | 02/27/2024 Or, with optional additional years, 02/27/2028 |

| Licenses and Services (Purchased if checked) | | | # User Licenses / Accesses (Except where otherwise stated, totals listed are for selected Content Libraries only) |
|-------------------------------------------------|--------------------|----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> | DSS Content-Hosted | <input checked="" type="checkbox"/> Safety | <input checked="" type="checkbox"/> US English (or) <input checked="" type="checkbox"/> All Languages |
| | | <input type="checkbox"/> Human Resources | <input type="checkbox"/> US English (or) <input type="checkbox"/> All Languages |
| | | <input type="checkbox"/> Maintenance & Reliability | <input type="checkbox"/> US English (or) <input type="checkbox"/> All Languages |
| | | <input type="checkbox"/> The New Normal | <input type="checkbox"/> US English (or) <input type="checkbox"/> All Languages |
| <input type="checkbox"/> | | <input type="checkbox"/> Robotics | |

| | | | |
|----------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|--------------------------------------------------|--------------------------------|
| | DSS Premium Content-Hosted | <input type="checkbox"/> Risk Factor | |
| <input type="checkbox"/> | Partner Content-Hosted | <input type="checkbox"/> DSS ISA content | |
| | | <input type="checkbox"/> ISA version 2.0 content | |
| | | <input type="checkbox"/> Fieldbus | |
| If Content only, SCORM version (select one): <input type="checkbox"/> SCORM1.2 (or) <input type="checkbox"/> SCORM 2004 v3 | | | |
| <input checked="" type="checkbox"/> | dss+ LMS | | 7,000 |
| <input type="checkbox"/> | Content Customization & Authoring Tool | | |
| <input checked="" type="checkbox"/> | System Setup and Readiness | | <i>(included)</i> |
| <input checked="" type="checkbox"/> | Annual Technical Support | | <i>(included)</i> |
| <input type="checkbox"/> | Implementation Services | | |
| | <input type="checkbox"/> LMS Implementation | | |
| | <input type="checkbox"/> Instructor Led Training for LMS Account Owners | | |
| <input type="checkbox"/> | Managed Services | | <i>(See Statement of Work)</i> |
| <input type="checkbox"/> | Other Services: (Description of Services) | | |

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Exhibit A continued...
License & Services Agreement
Order Form

SERVICE LEVELS AND LICENSE DESCRIPTION

DSS Content Libraries Licenses

DSS will provide access to hosted Content Library(ies) indicated in the Order Form for up to the total number of Users listed in the Order Form.

dss+ LMS Licenses

DSS will provide access to the LMS up to the total number of Users listed in the Order Form. The licensing fees include:

- Site provisioning and system configuration
- All maintenance, management, upgrades and updates
- Access to online knowledge base
- At no time may Client export, overwrite, delete, or in any way alter DSS Content or Partner Content in dss+ LMS without prior express written consent from DSS.
- DSS will retain two administrative licenses within Client's LMS and/or Authoring Tool instance at Client's cost for support and troubleshooting purposes.

Additional Software License Fees

- Additional DSS Content Users may be purchased at any time in during the term of this Agreement via signed Amendment in minimum blocks of 50 Users at an annual cost of \$35 per User, per individual Content Library.
- Additional dss+ LMS User may be purchased at any time in during the term of this Agreement via signed Amendment in minimum blocks of 50 Users at an annual cost of \$50 per LMS User.
- Any Active Users in excess of the total number of Users set forth in the Order Form shall be charged the above listed fees.

Software Technical Support

DSS Technical Support is available in English to Client Named Support Administrators 24 hours a day, 7 days a week, 365 days a year, via phone and email. US: 1-800-946-8584, International: +1-757-306-7474 or product.support@consultdss.com (preferred). DSS is permitted reasonable down time for scheduled maintenance.

Requests received outside of US business hours are forwarded to the After Hours Support line.

- Weekends: Friday 9:00 PM Eastern Time until Sunday 9:00 PM Eastern Time.
- US Holidays: 9:00 PM Eastern Time the day prior to the holiday until 8:00 AM Eastern Time the day(s) after.

System Setup & Readiness

The system setup and readiness deliverables provided by DSS are documented below.

DSS Responsibilities:

- DSS shall assign a resource who will initiate a Client eLearning account in DSS systems, provision Content library(ies) purchased by Client as stated in the Order Form and enable access to Content.

Timeline and Delivery

System Setup & Readiness takes approximately 10 business days in duration, may occur concurrently, if applicable, with dss+ LMS System Setup & Readiness phase, and is performed remotely by DSS.

The end of System Setup & Readiness is defined as the completion of the deliverables above. Upon completion of this phase, Content is available for implementation.

EXHIBIT B

SCHEDULE OF PAYMENTS

Compensation for the work tasks stated herein shall be in accordance with the following Schedule of Payments:

Recurring fees are invoiced at the beginning of the term. One-time fees are invoiced in full at the beginning of the applicable year.

| Total Fees and Invoicing Schedule (USD) | | | | | | | |
|------------------------------------------------|--------------------------------------------|-------------------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|-----------------------------------|
| | Year 1 | Total Fees for 1-year Initial Term | Optional Renewal Year 2 | Optional Renewal Year 3 | Optional Renewal Year 4 | Optional Renewal Year 5 | Total Fees for 5-year Term |
| Term: | 02/28/2023-02/27/2024 | | 02/28/2024-02/27/2025 | 02/28/2025-02/27/2026 | 02/28/2026-02/27/2027 | 02/28/2027-02/27/2028 | |
| Annual Fees: | \$72,552.00 | \$72,552.00 | \$71,772.00 | \$71,772.00 | \$71,772.00 | \$71,772.00 | \$359,640.00 |
| Annual Invoicing: | Invoiced upon signature of this Agreement. | | Invoiced on January 02, 2024 | Invoiced on January 02, 2025 | Invoiced on January 02, 2026 | Invoiced on January 02, 2027 | |

Exhibit C

CONSULTANT LICENSE AND SERVICE AGREEMENT

This License and Service Agreement, along with the Order Form and all other documents referenced herein is effective as of the Effective Date indicated on the Order Form, ("Effective Date") and entered into by and between DSS Sustainable Solutions USA, Inc., (hereinafter referred to as "DSS" or "dss+"), and the Client as detailed on the attached Order Form, ("Client"). The Agreement governs access to and the use of the Services, as defined below. Your access to and use of the Services is conditioned on your acceptance of and compliance with this Agreement. These terms apply to all users who access or use the Services. By providing a signature to this Agreement you agree to be bound by the terms of this Agreement. If you are using the Services on behalf of an organization or entity, then you are agreeing to this Agreement on behalf of that Client and you represent and warrant that you have the authority to bind the Client to the terms of this Agreement. In this case, "you" and "your" refers to you and that Client. Additionally, DSS and Client may individually be referred to as Party and collectively as Parties.

1. Definitions.

"Affiliate" shall mean any entity that controls, is controlled by, or is under common control with a party; where "control" means (a) the power, direct or indirect, to cause the direction or management of such entity, whether by contract or otherwise, or (b) direct or indirect ownership of more than fifty percent (50%) of the outstanding shares or beneficial ownership of such entity.

"Active User" means, in a given Term, a User, (as defined below), established on the LMS, (as defined below), with a designation of "active" at any time during the then current Term. Client has the ability to determine who is an Active User, however, is limited to the total number of Active Users as detailed in the Order Form who can concurrently access DSS Content and/or LMS functionality.

"DSS Content" means the data, text, images, sounds, information, modules, and/or other materials as described in the Order Form exclusive, if applicable, of any Partner or Client Content on the LMS.

"Client Content" if applicable, means any material Client stores on the LMS and/or Content Customization & Authoring Tool.

"Client Named Support Administrator" means the person(s) designated by Client as administrator who shall be the point of contact for Technical Support instances. Client acknowledges and consents, and Client shall inform all Client Named Support Administrators that DSS is collecting limited Client Named Support Administrator personal information for the purpose of fulfilling its obligations under this Agreement.

"Hosted" means DSS Content and/or Software directly linked to the LMS and or management of DSS Content that is solely managed and supported by DSS and/or DSS Partner, (as defined below) in a managed storage, network and/or cloud environment. Hosted content provides access to the most current versions and languages of courses in DSS library(ies).

"LMS" means the dss+ Learning Management System.

"Partner Content" means the data, text, images, sounds, information, hosting services, applications, modules and/or other materials as described in the Order Form for which DSS has secured all necessary or appropriate rights and licenses from third party owners. Partner Content and DSS Content may collectively be referred to as "Content" in this Agreement.

"Partner" means those third-party providers who provide the data, text, images, sounds, information, hosting services, software, applications, modules and/or other materials as described in the Order Form for which DSS has secured all necessary or appropriate rights and licenses from such third party owners.

“**Services**” means the licenses granted and services to be performed by DSS to Client as described in the Order Form.

“**Software**” means: (i) any and all proprietary web-based applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto, as well as applications that have been modified in any way by DSS at the request of a client; and (ii) applications provided by DSS-contracted third parties.

“**User(s)**” means those employees, contractors, and end users, as applicable, authorized by Client to utilize the Services and/or licensed products in accordance with this Agreement and Order Form.

2. Term and Termination.

a) The Term of this Agreement shall commence as of the date of the Effective Date indicated on the Order Form and shall continue in full force and effect until the end date listed on the Order Form (“End Date”) unless and until earlier terminated by either Party as set forth below (“Term”). The Website and/or DSS Content will be available from the start date as detailed on the Order Form (“Start Date”) through the End Date.

b) Either Party may terminate this Agreement if the other Party fails to cure any material breach of this Agreement within ten (10) days after receipt of written notice of such breach. Any termination hereunder shall not relieve or release either DSS or Client from any rights, liabilities or obligations that may have accrued under the law or terms of this Agreement prior to the date of such termination.

c) Either Party may terminate this Agreement, without cause, to be effective upon the subsequent anniversary date of this Agreement, upon sixty (60) days prior written notice of that anniversary date. Any termination hereunder shall not relieve or release either Coastal or Client from any rights, liabilities or obligations that may have accrued under the law or terms of this Agreement prior to the date of such termination. Coastal shall have no obligation to refund any monies paid. Coastal Content and/or Services as described in Order Form of this Agreement not delivered to Client prior to date of termination will not be invoiced.

d) Upon termination or expiration of this Agreement, DSS shall disable any Client access to the Hosted DSS Content and Client shall delete and destroy all Non-Hosted DSS Content and shall provide DSS with a written certification, within thirty (30) days after termination or expiration, that all Non-Hosted DSS Content has been deleted. Client has no right to use DSS Content after termination or expiration of this Agreement.

e) The expiration or termination of this Agreement shall not affect the obligations in Articles 3, 5, 6, and 8.

3. License.

a) For the fees set forth in the Order Form, DSS hereby grants to Client during the Term of this Agreement a worldwide, non-exclusive, non-transferable right and license for the number of Users set forth on the Order Form to access and to use the LMS, Software, and/or Content as detailed on the Order Form solely for the benefit of the Client’s internal business, (“License”). DSS hereby warrants and represents that it is the owner and has good title to DSS Content and/or has secured all necessary or appropriate rights and licenses from third party owners of third-party content sufficient for DSS to enter into this Agreement and grant these license rights, subject, if applicable, to Client executing and delivering any Partner EULA (as defined in Article 5(a) herein). Client shall ensure that all Users are bound to the terms and conditions of this Agreement including but not limited to the restrictions concerning the License, Confidential Information, and Intellectual Property. Client shall be responsible for any direct or indirect breaches of this Agreement by any Users.

b) DSS may, in its sole and reasonable discretion and at DSS's cost, in connection with the Services to be provided by DSS under this Agreement, make use of subcontractors, Partners and/or third parties selected by DSS. If applicable, Client is responsible for reviewing and understanding the terms and conditions (EULA or SLA) governing use of any Partner services, which such terms and conditions shall be provided to Client by such Partner.

c) **Restrictions.** Client shall not sell, lease, transfer, sublicense, or otherwise make available or permit access to the Content, or any portion thereof, to any third party other than Users. Client shall also not use the Content in any manner or for any purpose that misappropriates or otherwise violates any intellectual property right or any other right of DSS or any of its Partners or violates any applicable law. Failure to utilize the number of Users permitted annually during the Term of this Agreement and/or prior to termination of this Agreement will result in those Users being forfeited. Neither Client nor Users shall claim any ownership of LMS, Software, and/or Content by reason of their use of, or access to, the LMS, Software, and/or Content. Client shall indemnify, defend, and hold harmless DSS and its affiliates, officers, directors, agents, Partners, and subcontractors from and against all losses, damages, and claims arising out of or related to any alleged or actual: (i) infringement, misappropriation, misuse or breach of license restrictions by Client or by any Users of DSS Content or Partner Content; (ii) claims resulting from Client Content; or (iii) Client's misuse of the Services.

d) The LMS including all Content, data and information located in the LMS may be deleted by DSS ninety (90) days after expiration or termination of this Agreement.

e) Client is solely responsible, at its own expense, for acquiring, installing, and maintaining all equipment, hardware, software, and other equipment as may be necessary for it and its Users to connect to, access, and use Content and/or the LMS. DSS has the right, in its sole discretion, to delete or modify Content. Client is responsible for monitoring the number of Users it uses and its compliance with this Agreement.

f) The license provided hereunder is limited only to the Content detailed on the Order Form including any amendments thereto. Client shall not acquire, use, download, or otherwise access any other Content without a signed amendment to this Agreement. Any violation of this provision shall be considered as a material breach of this Agreement.

4. **Payment.**

As full compensation for the licenses granted and Services provided hereunder, Client agrees to pay the fees as detailed on the Order Form to be invoiced as detailed on the Order Form plus any Additional Fees incurred, as set forth on the Order Form. Payment shall be made in U.S. Dollars within thirty (30) days from the date of DSS's invoice.

Payments to DSS shall be made either by wire transfer or check to the following applicable account

If by wire transfer:

HSBC Bank USA, N.A.

Account Number: 892000368

Routing Number: 022000020

ABA Number: 021001088

SWIFT Code: MRMDUS33

If by check to:

DSS Sustainable Solutions USA, Inc.

4023 Kennett Pike #282

Wilmington, DE 19807-2018.

c) DSS reserves the right to suspend access to the DSS Content in the event any fees payable under this Agreement are more than thirty (30) days past due.

d) DSS may adjust the Fees in line with the US Consumer Price Index (CPI), as published by The US Bureau of Labor Statistics (BLS).

5. Intellectual Property.

a) Client recognizes that DSS Content is copyrighted and subject to applicable copyright, database protections, and other rights of copyright owners and publishers under the laws of the United States and other countries. Client acknowledges that the DSS Content is proprietary to DSS and comprise: (a) works of original authorship, including compiled content containing DSS selection, arrangement, coordination, and expression of such content or pre-existing material it has created, gathered, or assembled and (b) information that has been created, developed, and maintained by DSS at great expense of time and money such that misappropriation or unauthorized use by others for commercial gain would unfairly and irreparably harm DSS. If DSS uses or licenses intellectual property owned by third parties in the performance of the Services, DSS shall obtain and maintain authorizations necessary to authorize Client's use of such intellectual property in connection with the Services, provided, however, that if required by Partner, Client shall enter into and deliver the respective Partner's end-user license agreement, software subscription agreement, or the equivalent of any of the foregoing in connection with the use of such Partner intellectual property (in either case, a "Partner EULA").

b) Client shall not directly or indirectly copy any DSS Content in whole or in part without the express written consent of DSS. Client shall not decompile, disassemble, electronically transfer, de-encrypt, or reverse engineer the DSS Content, or translate the DSS Content into another computer language. All of Client's rights to use any DSS Content is expressly stated herein and there are no implied rights. DSS reserves all rights not expressly granted to Client.

c) Client is permitted to modify DSS Content, (excluding Partner Content), using customization software located in the LMS, or, contingent upon Client entering into the Partner EULA, with customization software detailed on the Order Form. Client may customize DSS Content with any content that it has a right and/or license and Client is solely responsible for any content it so creates, uploads and/or stores within the customization software, as well as for any DSS Content it modifies. Preexisting materials and materials independently produced by Client which are used to modify DSS Content are owned by Client. To the extent Client creates a custom course that does not contain any DSS Content or intellectual property and/or infringe any DSS copyright, Client owns the custom course. DSS owns any derivatives of DSS Content created by Client and Client hereby assigns all right title and interest in any such Derivative Work, as defined in 17 USC Section 101, to DSS. DSS will have no right to use the Derivative Work, without the written permission of Client. Any course that infringes a DSS copyright is considered a Derivative Work and owned by DSS. Client must not upload or contribute any content not originally created by Client, or any content which is not properly licensed for use by Client.

6. Warranty and Liability.

a) DSS warrants that (a) the sale of any unmodified Services provided hereunder will not infringe any validly issued copyright. DSS does not warrant against infringement by reason of (i) the use of any information provided by Client; (ii) the use of any modification by Client, including modifications using customization tools located in the LMS and/or listed on the Order Form; or (iii) DSS Content combined with products or processes not provided or authorized by DSS. DSS makes no other express or implied warranties relating to the Services provided, including, without limitation, the warranty of fitness for purpose, merchantability, or result. Client assumes all risk and liability resulting from use of the licenses and/or Services, or information delivered hereunder, whether used singly or in combination with other products, services, or information.

b) In no event shall either Party be liable to the other Party for any indirect, incidental, consequential, special, punitive, exemplary or other damages arising out of Services provided under this Agreement.

c) DSS's aggregate liability to Client for any damages arising from the breach of this Agreement or the provision of any Services, materials or information covered by this Agreement, including any indemnification obligations, is limited to ONE MILLION DOLLARS (\$1,000,000) in respect to which damages are claimed. The limitations and exclusions of liability in this Article 6 shall apply regardless of the

form of action, whether under contract, tort, law, equity or otherwise. No Partner shall be liable to Client for any claims, losses, or damages arising out of or related to this Agreement.

d) DSS disclaims any and all liability and does not make any representations or warranties regarding the use of third party video communication platforms (or similar) for the purposes of remote delivery of any aspect of schedule a including by not limited to: (a) availability of the remote delivery site at any particular time, (b) freedom from interruptions or errors, (c) transmission to, from or within the site, (d) functionality, (e) lack of viruses, (f) compliance of the services, software and/or content with federal or state laws, or (g) that the site, software or content contained in the site will meet any particular criteria or performance of quality.

7. Technical Support.

DSS will use commercially reasonable efforts to provide adequate and competent technical support and assistance in English, 24 hours a day, seven days a week, 365 days a year, to enable Client to make use of the DSS Content; provided that DSS is permitted reasonable down time for routine and scheduled maintenance.

8. Confidential Information.

a) To the extent allowed by law, during the Term of this Agreement and for a period of three (3) years after this Agreement expires or is terminated, neither Party shall disclose to, use (except as permitted herein), or permit to be used by any third party any technical, scientific or business information, or any other information of the other Party, including any technical, scientific or business information, or any other information of third parties who provide Services under this Agreement, designated in writing as confidential at the time of disclosure, or if disclosed visually and/or orally, designated as confidential at the time of disclosure and confirmed in writing within thirty (30) days after such disclosure (collectively "Confidential Information") disclosed to, learned by, or developed by either party, its employees or agents under the agreement. Notwithstanding anything to the contrary, "Confidential Information" shall be deemed to include any communications between the parties but shall not include any information uploaded by Client to any DSS server or the Website. In addition, each Party shall (i) not use the Confidential Information of the other Party other than to fulfill its obligations under the Agreement; (ii) not allow access to the Confidential Information of the disclosing Party to anyone other than the recipient Party's employees or other permitted contractors, subcontractors, and agents who have agreed in writing: (a) to be bound by confidential obligations consistent with the terms of this Agreement; and (b) to use the Confidential Information solely to provide DSS Content and/or Services hereunder and for no other purposes; and; (iii) to protect the Confidential Information of the disclosing Party with at least the same level of care as it uses for its own confidential information of a similar nature but not less than a reasonable level of care. Notwithstanding the above, DSS may share the Client's Confidential Information with such of its Affiliates that have a need to access the same and have agreed to be bound by the confidentiality and non-use obligations imposed by this Agreement. The term "Affiliate" shall mean any entity that controls, is controlled by, or is under common control with a party; where "control" means (a) the power, direct or indirect, to cause the direction or management of such entity, whether by contract or otherwise, or (b) direct or indirect ownership of more than fifty percent (50%) of the outstanding shares or beneficial ownership of such entity. The Agreement and its terms and conditions are considered Confidential Information.

b) These restrictions on use and disclosure shall not apply to Confidential Information:

- (i) already known to the receiving Party when it was disclosed by the disclosing Party as demonstrated by prior existing records of the receiving Party;
- (ii) that is or becomes known to the public through no fault of either Party, its employees, or agents;
- (iii) that is lawfully received by either Party from a third party where the third party has not required either Party to maintain the information in confidence;
- (iv) developed by a Party independently of disclosure by the other Party; and
- (v) required to be disclosed by court order or otherwise by applicable law.

c) DSS will at all times hold all Personal Information in strict confidence, and protect it against any unauthorized use or disclosure using commercially reasonable skill, care and diligence and commercially reasonable internal controls, protections and safeguards in the collection, use, storing, handling,

processing, sharing, exchange and disclosure of Personal Information in accordance with generally accepted prevailing standards in respect of same and at all times in accordance with applicable privacy laws, including General Data Protection Regulation (GDPR) as may be amended or replaced from time to time ("Applicable Privacy Laws").

9. Miscellaneous.

a) **Assignment.** Neither Party shall assign or transfer the Agreement, in whole or in part, without the prior written consent of the other Party; provided, however, and notwithstanding anything to the contrary in this Agreement, DSS may, without Client's prior written consent, assign this Agreement, in whole or in part, to: (i) any Affiliate; and/or (ii) any purchaser of all or substantially all of the assets in the line of business to which this Agreement pertains; and/or (iii) any successor entity that results from reincorporation, merger, consolidation, sale, or other similar transaction or reorganization of any kind of DSS or its Affiliate with or into such purchaser or successor entity.

b) **Global Data.** IF PERSONAL INFORMATION WILL BE RECEIVED FROM AN EU AND/OR EEA COUNTRY TO THE HOSTED APPLICATION, THE PARTIES WILL ENTER INTO SEPARATE EU/EEA STANDARD CONTRACTUAL CLAUSES (CONTROLLER TO PROCESSOR) ("EU/EEA SCCS") TO FACILITATE THE TRANSFER OF PERSONAL INFORMATION TO COUNTRIES OUTSIDE OF THE EU/EEA. CLIENT WILL SIGN THE EU/EEA SCCS AT OR BEFORE THE SIGNATURE OF THIS AGREEMENT. IF AT ANY TIME DURING THE TERM OF THIS AGREEMENT, CLIENT WILL HAVE PERSONAL INFORMATION OF CLIENT AND/OR AUTHORIZED USER ORIGINATING FROM AN EU AND/OR EEA COUNTRY, CLIENT WILL IMMEDIATELY NOTIFY DSS IN WRITING AND IMMEDIATELY EXECUTE THE EU/EEA SCCS WITH DSS, WHICH WILL BE PROVIDED BY DSS TO CLIENT. IT IS AGREED BY CLIENT THAT DSS SUBCONTRACTOR'S, SUBCONTRACTOR AFFILIATES AND SUBCONTRACTORS ARE GRANTED A NON-EXCLUSIVE RIGHT TO PROCESS DATA SOLELY TO PROVIDE THE HOSTING SERVICE (CLOUD).

The Global Data Processing Addendum is available at <https://www.dsslearning.com/global-data-processing-addendum>.

c) **Auditing Rights.** Client agrees that DSS including DSS partners who provide Service under this Agreement, has the right to audit LMS activity at any time for compliance with this Agreement. If such audit should disclose any over usage by Client, Client shall immediately pay DSS, in accordance with the payment terms stated on DSS's invoice, the amount for such overages, along with interest calculated at the rate of one and one-half percent (1.5%) per month from the date of the first overage.

d) **Reporting.** At any time during the Term of this Agreement and in accordance with the terms stated herein, Client may retrieve data, including any personally identifiable information about Client's Active Users ("Personal Information"), if any, via the report functionality located in the LMS. It is the sole responsibility of the Client to run, store and manage such reports and DSS shall bear no responsibility or liability for the running, storing, or managing of any Client report.

e) **Partner Audit Rights.** Subject to Client's reasonable security and confidentiality procedures, any Partner retained by DSS to provide Software to Client, may at any time, during normal business hours, audit the number of Active Users or other usage information of Client to ensure there is no over usage by Client.

f) **Notices.** All notices, consents, approvals, or requests under the Agreement shall be in writing and shall be deemed given when sent by facsimile machine, mailed (by registered or certified mail, return receipt requested) or by electronic mail. The initial Client address for such communications (including electronic mail) are set forth on the Order Form.

g) **Excused Performance.** No liability shall result from delay in performance or nonperformance, directly or indirectly caused by circumstances beyond the control of the Party affected, including, but not limited to, act of God, fire, explosion, flood, war, act of or authorized by any Government, accident, labor trouble or shortage, pandemic, inability to obtain material, equipment or transportation, failure of electronic or mechanical equipment, failure of electric power or telecommunications, failure of supplier, failure of internet service provider. The Party experiencing a force majeure shall promptly give notice to the other Party of the occurrence of the force majeure and shall describe the force majeure in reasonable detail.

h) **Waiver.** The waiver by either Party of any breach or default hereunder, or the failure of either Party to enforce any of the terms and conditions herein shall not affect, limit or waive the right of either Party thereafter to enforce and compel strict compliance with the terms of this Agreement.

i) **Severability.** If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement, this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions or business relations contemplated herein are not affected in any manner materially adverse to any Party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner.

j) **Conflicting Terms of Purchase Orders.** In the event the terms of this Agreement, including CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES and exhibits thereto, conflict with the terms of any form purchase order of Client, or other Client form, the terms of this Agreement shall control. Client expressly waives any provisions in any form purchase order or other form that purports to control over this Agreement. No modifications shall be effected by the acknowledgment or acceptance of purchase order forms stipulating additional or different conditions.

k) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

l) **Entireties.** This Agreement, together with along with the Scope of Work and Fees and, if applicable, Global Data Processing Amendment, constitutes the entire Agreement between the Parties and supersedes any prior communications, on-line or other electronic or written licenses between the Parties with respect to the subject matter hereof. No other terms shall apply. This Agreement may only be amended by a writing signed by both Parties.

DSS Mailing Address:

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