

# NON-NEGOTIABLE CONTRACT: SECTION II

## A. INSURANCE PACKAGE

1. Insurance shall be a minimum of \$1,000,000.00 (One Million Dollars) combined single limit. Insurance shall be in names of MOWSOFLO including providing coverage to MOWSOFLO, its employees, directors, officers, volunteers, and Caterer and shall comply with all requirements of Florida law.
2. To furnish MOWSOFLO with a certificate of insurance certifying that Caterer is carrying Workers' Compensation, comprehensive (including products), bodily injury and property damage liability insurance in such amounts as are acceptable to MOWSOFLO.
3. All subcontractors/Caterers without a verified audit and/or financial statements to the satisfaction of MOWSOFLO, shall, prior to the commencement of work hereunder, furnish to MOWSOFLO a performance bond or a security deposit mutually agreed upon covering the faithful performance of the Contract. Whenever subcontractor/Caterer is in material default of the contract, MOWSOFLO HAS THE RIGHT TO USE THE PERFORMANCE BOND OR ANY OTHER SECURITY DEPOSIT OF THE SUBCONTRACTOR/CATERER to pay the cost of replacement meals for a period of thirty-two (32) days, commencing from the date of subcontractor/Caterer's refusal, neglect of material failure to deliver meals as required by the terms and conditions of the contract.
4. AUTHORIZATION TO WITHHOLD PAYMENTS THEN DUE SUBCONTRACT OR/CATERER AT TIME OF DEFAULT

Should any subcontractor/Caterer, at any time during the progress of the Contract, in the sole opinion of MOWSOFLO, refuse, neglect or fail to deliver meals as required by the terms and conditions of this Contract, MOWSOFLO shall have the right, and is hereby authorized without prejudice to any other remedy, to make good such deficiencies, to withhold payment of any unpaid balance then due subcontractor/Caterer, and to deduct the cost to MOWSOFLO to make good such deficiencies of subcontractor/Caterer from the unpaid balance then due subcontractor/Caterer.

5. COMPLETION BY MOWSOFLO ON SUBCONTRACTOR'S DEFAULT

Since time is of the essence should any subcontractor/Caterer at any time during the progress of contract, in the sole opinion of MOWSOFLO, refuse, neglect or fail to deliver meals as required by the terms and condition of this contract, MOWSOFLO shall have the right, and is hereby authorized to provide replacement meals, and said subcontractor/Caterer shall be liable to MOWSOFLO for all resulting cost, damages and expenses incurred by MOWSOFLO to provide said replacement meals for a period of thirty-two (32) days, commencing from the date of subcontractor/Caterer's refusal, neglect or failure to deliver meals as required by the terms and conditions of the contract.

## B. INSPECTION

Authorized representatives of MOWSOFLO, AAABC and the DoEA may inspect the food used in the meals to determine compliance with all specifications and to reject food not meeting said specifications and that any food rejected for failure to meet specifications shall not be paid for by MOWSOFLO.

Should inspection/monitoring reports by the Health Departments, AAABC, and/or MOWSOFLO cite violations of the sanitary code at the Commissary and/or in food transport containers delivered to clients residences immediate corrective action plan must be initiated. Reoccurrence of these findings within any given period of two months after corrective action plan is executed will be considered breach of contract. The project will be compelled to take appropriate action. ***Caterer must provide MOWSOFLO with copies of all Health inspection reports within 7 days of receipt.***

#### **C. FEDERAL AND STATE REGULATION; STATE LICENSING STANDARDS**

1. To conform to and comply with the requirements of Title III-C of the Older Americans Act of 1965, as amended; Title 45 Code of Federal Regulations, Chapter 12, Part 1321 and all amendments thereof; and the current edition of DoEA's Programs and Services Manual and all amendments thereof; and any relevant regulations of the State of Florida.
2. To comply with all applicable accrediting standards and any other standards or criteria established by the DoEA to assure quality of service.
3. To comply with all federal, state, and local laws and regulations governing the preparing, handling and transporting of food; to procure and keep in effect all necessary licenses, permits, and food handler's cards as are required.
4. Assuring food safety to prevent food-borne illness to contaminate all meals delivered to participants. MOWSOFLO will subject any suspicious food it deems contaminate to bacteriological testing at the Caterer's expense. Furthermore, MOWSOFLO will intensify its inspection and monitoring visits using its full-time Nutritionist. CORRECTIVE ACTION PROGRAMS will be demanded for all deficiencies. Repeating deficiencies which were not fully or only partially corrected can be interpreted as breach of contract.
5. Caterers must maintain a written, documented formal sanitation program which meets or exceeds the minimum requirements of the State, Federal, municipal, or other agencies authorized to inspect or accredit the food service operation.
6. Caterers must comply with Florida State Statutes Chapter 2010-114: Level II Background Screening and any subsequent amendments. Documentation must be available for monitoring purposes.

#### **D. AUDIT AND RECORDS**

1. To maintain financial records and reports relating to funds paid under the contract and submit reports to MOWSOFLO upon request.
2. All records of Caterer bearing upon food purchase, storage, preparation and transportation directly related to the meals or other food delivered under this agreement including records of receipts, storage shall be made available to the MOWSOFLO or its authorized representatives upon request.
3. The MOWSOFLO and other authorized representatives of the State Examiner or Public Accountant and the auditors of ADRC, the DoEA and the United States General Accounting

Office upon request, shall have access to all such records for audit or review at a reasonable time and place

**E. RETENTION OF RECORDS**

1. To retain all books, records, accounting records and other documents relative to this Agreement for such a period of 5 years after the date of submission of the final quarterly report of accountability for the budget year, and in the cases of audit exception, until such exception has been cleared or resolved to the satisfaction of the DoEA and the Federal Government.
2. Records of non-expendable property acquired with federal funds shall be retained for 5 years after its final disposition.
3. Federal auditors, the Secretary and the Comptroller General of the United States, the DoEA, ADRC; and any persons duly authorized by the DoEA shall have full access to, and the right to examine any of said materials during said period.

**F. MONITORING**

1. MOWSOFLO, the ADRC, the DoEA and Federal, State and County personnel shall be permitted to monitor the aforementioned service program according to applicable regulations of the state and federal governments and to audit and review all records required to be maintained.
2. Such monitoring shall consist of, but shall not be limited to, the inspection at any time of the Caterer's food preparation, packaging and storage areas, and the food containers and automotive vehicles used in transporting prepared meals and other food to determine the adequacy of the Caterer's food handling, cleaning, and sanitation and maintenance practices.

**G. CIVIL RIGHTS ACT OF 1964, TITLE VI AND SECTION 504**

1. That there will be no discrimination against any employee or person served on account of race, color, sex, religious background, ancestry, sexual orientation or national origin in its performance of this Contract.
2. The Caterer shall comply with Title VI of the Civil Rights Act of 1964 (PL. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 CFR Part 80).
3. The Caterer shall comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.
4. It is expressly understood that upon receipt of evidence of such discrimination MOWSOFLO, ADRC, the DoEA shall have the right to terminate said Contract.

**H. INDEMNIFICATION**

That Caterer shall act as an independent contractor and not as an employee of the MOWSOFLO in operating the aforementioned services. Caterer shall be liable, and agrees to be liable for, and shall indemnify, defend, and hold MOWSOFLO, its employee, directors, officers and volunteers, ADRC, and the DoEA harmless, for all claims, suits, judgments or damages arising from the operation of the

services provided by the Caterer as set forth within this Contract during the course of the agreement including all costs and reasonable attorney fees.

#### **I. CATERER STAFFING/PERSONNEL/ADMINISTRATIVE REQUIREMENTS**

1. **Food Service Manager:**  
Caterer must employ a full-time, local food service manager who will devote the necessary time to the execution and maintenance of this Contract.
2. **Insurance:**  
To provide Workers' Compensation, property damage and bodily injury liability coverage for Caterer employees and equipment under the supervision of the project as required.
3. **Participant Information Confidentiality:**  
All information provided to the Caterer relating to participants is considered confidential. This information is not allowed to be given or used by any other organization/agency/entity. Violation of this confidentiality will be considered a breach of contract.
4. **Incident Reporting:**  
If, at any time, the Caterer's personnel witness or are involved in any incident related to the participant or the participant's property, MOWSOFLO shall be notified immediately and an Incident Report must be filed with MOWSOFLO within 24 hours of the incident. Any follow up information shall also be provided such as Police reports and insurance claims in which MOWSOFLO is named.
5. **Non-compete Clause:**  
Caterer acknowledges that MOWSOFLO is a Florida corporation engaged in the business of providing nutritional and service programs for the elder individuals in its community and that it desires to continue in the future to develop program services for its clientele. Caterer therefore agrees that Caterer will not individually perform nor directly or indirectly own, manage, operate, join, control, participate in or be connected as an officer, employee, partner or shareholder with any individual or entity who sells, or provides programs or services of programs that MOWSOFLO develops or has developed for a period of three (3) years immediately following the "Termination Date" of the Caterer's contract with MOWSOFLO.  
  
This clause is not intended to limit or restrict the caterer's food service business within Broward County or any other locale but refers to the administrative functions of programs in Broward County which Meals on Wheels South Florida currently operates. This includes but is not limited to the OAA, Complete Cuisine, or other insurance funded programs of Meals on Wheels South Florida.
6. **UNIFORMS**  
All delivery drivers must wear clean garments when making delivery. Company shirts must be worn at all times and neatly tucked in waist of pant or skirt. Improper, unclean, not ironed, gang related, or other wise inappropriate attire or unkempt personal appearance, disrespectful of the population being served is prohibited.

#### **7. CONFIDENTIALITY AND PUBLIC COMMUNICATIONS.**

Except as **otherwise set out in this paragraph**, Confidential Information obtained through this Agreement or about MOWSOFLO or its clients shall be protected as confidential and maintained in secrecy by the **Caterer and it's employees (receiving party)** for the term of this Agreement, and for two (2) years following termination thereof, using the same safeguards as it uses to protect its own commercially confidential information of a similar character, but at least using reasonable care, and the receiving party shall not use or disclose in any manner to any third party any such received confidential information without the prior express written consent of the MOWSOFLO until such information becomes public.

For purposes of this Agreement, "Confidential Information" shall include but not be limited to:

- a) any proprietary information or intellectual property relating to the MOWSOFLO's programs and/or its processes, methodologies, systems, technologies or functionality;
- b) any information identified in writing as "Confidential Information" by either Party;
- c) any personally identifiable information about any client.

Notwithstanding the foregoing, Confidential Information may be disclosed by either Party as may be required by law and legal process. In such circumstances, the **releasing Party** will provide the **non-releasing Party** with (i) notice of its intent to disclose Confidential Information and (ii) an opportunity for the **non-releasing Party** to object to such disclosure in accordance with law. Any public, press, media or public relations communications related in any way to the Program must in advance be coordinated with, and approved by, both Parties.

As the majority of our customers are elderly and vulnerable, it is imperative that all employees understand and abide by the following DOEA regulations on Client Confidentiality:

"All recipients of OAA Title III funding are responsible for maintaining confidentiality of information obtained in the delivery of services. No information about an older person, or obtained from an older person by a service provider, area agency or the state agency may be disclosed in a form that identifies the person, without the informed consent of the person or of his/her legal representative, unless disclosure is required by court order, or the program monitoring by authorized federal, state, or local monitoring agencies. It should be understood by older persons that failure to provide informed consent may preclude referral to another service agency. (DoEA Program and Services Manual 2010, Chapter IV, pg. 4-30)

Improper transfer of material or disclosure of information, even though it is not apparent that an employee has personally gained by such action, constitutes unacceptable conduct. Any employee who participates in such a practice will be subject to disciplinary action, up to and including possible termination of employment.

The protection of confidential business information and trade secrets are vital to the interests of the success of MOWSOFLO. Such confidential information includes, but is not limited to, the following examples:

- \*compensation data
- \*employee or client lists
- \*financial information
- \*pending projects and proposals

All employees, volunteers, and/or subcontractors' management and staff may be required to sign a non-disclosure agreement as a condition of employment or subcontracting. Those who improperly use or disclose trade secrets, client documentation or confidential business

will be subject to disciplinary action, up to and including termination of employment, termination of contract and legal action, even if they do not actually benefit from the disclosed information.

**J. PURCHASE ORDERS**

Notification by MOWSOFLO to Caterer of the number of meals to be delivered shall constitute a purchase order. Purchase orders shall be verified and shall not exceed number requested.

**K. PAYMENT PROCEDURES**

Caterer shall bill MOWSOFLO weekly within 3 work days of the end of each week. MOWSOFLO will pay such billings within 60 business days of receipt less any shortages as agreed upon. All bills late or not fully reconciled one week after closing date of MOWSOFLO may not be paid. Payment schedules and the obligation of MOWSOFLO to make payments to caterer are valid only if sufficient funds for this contract have been made available to MOWSOFLO by the AAABC, USDA, and Administration on Aging or other applicable government agency.

**L. FAILURE TO DELIVER**

In the event that Caterer fails to deliver any meal(s) or other foods to the clients and/or Nutrition Sites, as agreed upon, MOWSOFLO may request a special delivery at the Caterer's expense or may procure a meal(s) or other food elsewhere. Such purchases will be charged to the Caterer, plus any expenses incurred by MOWSOFLO in procuring the food.

**M. EFFECTIVE DATE**

1. The effective date upon which purchase of services under this Contract shall begin shall be the July 1, 2023
2. This Contract shall remain in force until the total funds payable are expended, until a contract is executed for extension or re-negotiated for services under Title III-C of the Older Americans Act, or until December 31, 2023 whichever occurs first.

**N. BID PACKAGE INCLUSION**

Caterer hereby further agrees that all specifications, systems, equipment, supplies, obligations, etc., which are described in the bid package submitted to MOWSOFLO which are not inconsistent with the specific requirements called for under this Agreement are hereby incorporated by reference as part of this Agreement as though they were specifically set forth.

**O. TERMINATION**

1. **Termination because of lack of funds** - It is further agreed that in the event funds to finance this Contract, or part of this Contract, become unavailable, MOWSOFLO may terminate the Contract upon no less than 24 hours notice in writing to the Caterer. Said notice shall be delivered by certified mail, email or in person.
2. **Termination at Will** - Section 2.O.1 notwithstanding, this Contract may be terminated, in whole or any part, by either party upon no less than 30 days notice with or without cause. Notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery.

**3. Termination for Breach** - Unless a breach is excused, MOWSOFLO may, by written notice of breach to the Caterer, terminate the whole or any part of this Agreement in any of the following circumstances:

- a. If the Caterer materially fails to provide services in the manner called for by this Agreement within the time specified herein or fails to cure this problem within a ten working day time period after notification; or
- b. If the Caterer materially fails to perform any part of this agreement; or
- c. If the Caterer and/or it's personnel violate Section II.I.3 of this contract.

Termination, after providing the Caterer notice in the time-frame specified in Section II.O.3.a. above, shall be upon no less than twenty-four hours notice in writing delivered by certified mail, telegram or in person. Both parties shall continue the performances of this Agreement to the extent not terminated under the provisions of this clause.

- 4. Waivers of breach of any provision of the Contract shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of the contract.
- 5. Any disputes or litigation between the Caterer and MOWSOFLO arising out of this Contract, venue shall be in Broward County, Florida, and the prevailing party in such dispute or litigation shall recover their own attorney's fees and costs of suits including, but not limited to, fees for attorneys, paralegal and computerized legal research, including appellate fees and costs, if applicable.

The above contract constitutes the entire agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be signed by their duly authorized representatives this day and year first above written.

By: **Duly Authorized representative of  
Human Services Network, Inc. d/b/a/ MEALS ON WHEELS SOUTH FLORIDA**

Name: **Mark Adler**

Title: **Executive Director**

Signature: \_\_\_\_\_

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

By: **Duly Authorized representative of**  
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Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

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