



**Office of the President**  
FLORIDA INTERNATIONAL UNIVERSITY

## PRESIDENTIAL APPROVAL FORM

To be the cover sheet to any and all contracts, Univmail messages, letters and any document(s) requiring the President's signature and/or approval

DATE: 08/18/22

INITIATING DEPARTMENT: OFFICE OF THE CONTROLLER

CONTACT PERSON: KELLY MAYORGA

EXTENSION: 7-1246 FAX: 7-3600 EMAIL: KELLY.LOLL@FIU.EDU

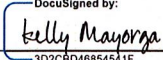
NUMBER OF ITEMS: AMENDMENT 1 TO CONTRACT PUR-05407 FOR OFFICE SUPPLIES AND PRODUCTS.

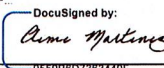
DATE NEEDED: 08/18/2022

DOCUMENT DESCRIPTION: AMENDMENT 1 TO CONTRACT PUR-05407 FOR ITN-2022-00057 FOR OFFICE SUPPLIES AND PRODUCTS TO CORRECT STARTING DATE TO AUGUST 12, 2022

*I have reviewed and approved the attached document(s) for the President's signature and/or approval. I accept full responsibility should there be any error in the content, syntax, or form of the document. I am responsible for the editing and/or reformatting of this document if any changes are needed.*

*I understand that the President and/or his designee will retain the right to review any document that he/she chooses, and to request changes where deemed appropriate.*

INITIATOR SIGNATURE:  DATE: 8/18/2022

APPROVED BY VICE PRESIDENT:  DATE: 8/18/2022

APPROVED BY DEAN (WHEN APPLICABLE): \_\_\_\_\_ DATE: \_\_\_\_\_

*Once this request has been approved, your office will be notified that the document(s) are ready for retrieval.*

### OOP USE ONLY

APPROVAL:  DATE: 8/19/22

This form should be duplicated for further use.

August 16, 2022

**MEMORANDUM**

TO: Aime Martinez Interim CFO & Sr. VP

FROM: Kelly Mayorga, C.P.M., Executive Director of Procurement  
Office of the Controller

DS  
LM

**SUBJECT: REQUEST FOR THE PRESIDENT'S SIGNATURE**

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Who: Amendment 1 to Contract #PUR-05407 – ODP Business Solutions, LLC

What: Contract resulting from the Competitive Solicitation  
ITN 2022-00057 for Office Supplies and Products

When: The Contract will commence on the last day signed and will continue for an initial term of five (5) years and may be renewed in writing by parties for two (2) additional two (2) year terms. Amendment 1 to revise Effective Date of the contract to August 13, 2022

Where: University-wide

Why: FIU Procurement Services initiated an Invitation to Negotiate ITN-2022-00057 for Office Supplies and Products. Evaluation Committee for the ITN-2022-00057 decided to award contract to ODP Business Solutions, LLC. Contract was approved on BOT Meeting on June 16, 2022.

Cost: \$13,500,000.00

Funding  
Source: Various

KM:yz  
M-4428

### AMENDMENT #1 TO CONTRACT

This Amendment #1 to Contract (this "**Amendment #1**") is effective August 13, 2022 (the "**Amendment #1 Effective Date**"), by and between ODP Business Solutions, LLC, a Delaware limited liability company, ("**ODP**") and Florida International University Board of Trustees ("**FIU**").

**WHEREAS**, FIU and ODP, entered into that certain Contract, #PUR-05407, dated June 20, 2022 (pursuant to Invitation to Negotiate #2022-00057 Office Supplies and Products), effective as of August 13, 2022 (the "**Contract**"), and the parties desire to amend the Contract, on the terms and conditions as provided herein; and

**WHEREAS**, the parties hereto agree that the Contract is amended as stated herein and that this Amendment #1 shall be incorporated into the Contract and made a part thereof.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. The Effective Date of the Contract shall be August 13, 2022.
2. Capitalized terms not otherwise defined in this Amendment #1 shall have the same meaning as set forth in the Contract. This Amendment #1 may be executed in any number of multiple counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. Any provision not specifically modified by this Amendment #1 shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have executed this Amendment #1 as of the Amendment #1 Effective Date.

#### ODP BUSINESS SOLUTIONS, LLC

DocuSigned by:  
By: Brian Abromovage

30BC89D4630C4F6...

Name: Brian Abromovage

Title: Vice President \_\_\_\_\_

Date: 8/16/2022 \_\_\_\_\_

#### FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES

By: Kenneth Wessell

Name: Kenneth Wessell

Title: Interim President

Date: 8-19-2022



Approved as to  
form and legality  
F.I.U. Attorney

Date: 8-18-22



## Office of the President

FLORIDA INTERNATIONAL UNIVERSITY

### PRESIDENTIAL APPROVAL FORM

To be the cover sheet to any and all contracts, Univmail messages, letters and any document(s) requiring the President's signature and/or approval

DATE: 06/22/22

INITIATING DEPARTMENT: OFFICE OF THE CONTROLLER

CONTACT PERSON: KELLY MAYORGA

EXTENSION: 7-1246 FAX: 7-3600 EMAIL: KELLY.LOLL@FIU.EDU

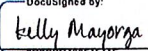
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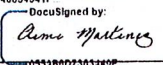
DATE NEEDED: 06/22/2022

DOCUMENT DESCRIPTION: CONTRACT PUR-05407 FOR ITN-2022-00057 FOR OFFICE SUPPLIES AND PRODUCTS

*I have reviewed and approved the attached document(s) for the President's signature and/or approval. I accept full responsibility should there be any error in the content, syntax, or form of the document. I am responsible for the editing and/or reformatting of this document if any changes are needed.*

*I understand that the President and/or his designee will retain the right to review any document that he/she chooses, and to request changes where deemed appropriate.*

INITIATOR SIGNATURE:  DATE: 6/22/2022

APPROVED BY VICE PRESIDENT:  DATE: 6/24/2022

APPROVED BY DEAN (WHEN APPLICABLE): \_\_\_\_\_ DATE: \_\_\_\_\_

*Once this request has been approved, your office will be notified that the document(s) are ready for retrieval.*

### OOP USE ONLY

APPROVAL: \_\_\_\_\_ DATE: \_\_\_\_\_

This form should be duplicated for further use.

0141967



FIU CONTRACT# PUR-05407

**COVER AGREEMENT**

**THIS COVER AGREEMENT** (the "Agreement") is made and entered into on the last date signed below (the "Effective Date"), by and between **THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES** ("FIU") and **ODP BUSINESS SOLUTIONS, LLC**, a Delaware limited liability company, whose address is 6600 North Military Trail, Boca Raton, FL 33496, who is authorized to do business in the State of Florida (the "Contractor").

**RECITALS**

**WHEREAS**, FIU requested solicitation responses for Competitive Solicitation E-ITN No. 2022-00057 (the "ITN") to provide the following goods and/or services: Office Supplies and Products (the "Services");

**WHEREAS**, the Contractor submitted a solicitation response for the ITN to provide and perform the Services ("Solicitation Response"), along with a Best and Final Offer ("BAFO"), which was accepted by FIU; and

**WHEREAS**, this Cover Agreement, the ITN, the Solicitation Response, and the BAFO shall be known, collectively, as the "Contract."

**NOW, THEREFORE**, in consideration of the mutual promises and agreements made herein and intending to be legally bound hereby, the parties hereto agree as follows:

1. **Term.** The Contract commences on the Effective Date and (as detailed on Section 1.1 of the ITN – Statement of Objective), will continue for an initial term of five (5) years (the "Initial Term"), and may be renewed in writing by the parties for an additional two (2) one-year terms (each, a "Renewal Term") (collectively, the Initial Term and the Renewal Term(s) shall be known as the "Term").

2. **Contractual Precedence.** The Contractor will provide to FIU the Services pursuant to the terms and conditions described in the following: this Cover Agreement, the Competitive Solicitation ITN No. 2022-00057, including the Standard Provisions, attached hereto together as Exhibit I and incorporated herein by reference; the Contractor's Solicitation Response, attached hereto as Exhibit II and incorporated herein by reference; and if applicable, the Contractor's Best and Final Offer, attached hereto as Exhibit III and incorporated herein by reference (all of which constitute, collectively, part of the Contract). In the event of conflict between or among terms and conditions contained in the foregoing documents with regards to the Services, such documents shall govern in the following order of precedence:

- a. first, this Cover Agreement;
- b. second, the Standard Provisions of the Competitive Solicitation ITN No. 2022-00057;
- c. third, the Contractor's Best and Final Offer;

- d. fourth, the Contractor's Solicitation Response; and
- e. fifth, the Competitive Solicitation ITN No. 2022-00057, excluding the Standard Provisions.

**3. Notices.** Any notices required under the Contract shall be sent via U.S. Mail, return receipt requested, or by personal hand delivery, to the parties at the following addresses:

**Notices to Contractor:**

ODP Business Solutions, LLC  
6600 North Military Trail  
Boca Raton, FL 33496  
Attention: Vice President

**Notices to FIU:**

Florida International University  
Procurement Services Department  
11200 S.W. 8<sup>th</sup> Street, CSC 411  
Miami, FL 33199  
Attn: Executive Procurement Director

*With copy to:*

ODP Business Solutions, LLC  
6600 North Military Trail  
Boca Raton, FL 33496  
Attention: Office of the General Counsel

*With copy to:*

Florida International University  
Office of the General Counsel  
11200 S.W. 8<sup>th</sup> Street, PC 511  
Miami, FL 33199

**Notices to Administrator:**

Omnia Partners, Public Sector  
840 Crescent Center Drive, Suite 600  
Franklin, TN 37067  
Attention: President

**4. No counterparts; facsimile signatures allowed.** The Contract may not be executed in counterparts. It may be signed electronically and such electronic signatures shall constitute an original for all purposes. This Contract shall be considered signed if/when a party's signature is delivered by hand, mail, or e-mail transmission of a ".pdf" format date file, including via DocuSign. Such signature via DocuSign shall be treated in all respects as having the same force and effect as an original signature.

**5. Authority.** Contractor represents and warrants that the Contract has been duly authorized, executed and delivered by and on behalf of Contractor and constitutes the valid, binding and enforceable agreement in accordance with the terms hereof. If the Contract is signed by Contractor's agent, such agent warrants that he/she is duly authorized to act for and on behalf of Contractor, that he/she is authorized to enter into the Contract and that the agent and Contractor shall be jointly and severally liable for any breach of the Contract or of the representation.

**6. Entire Agreement.** The Contract, along with the Exhibits and any other appendices, addenda, schedules, and amendments hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written. The parties hereby acknowledge and represent that said parties have

not relied on any representation, assertion, guarantee, warranty, collateral contract or other assurance, except those set out in the Contract, made by or on behalf of any other party or any other person or entity whatsoever, prior to the execution of the Contract.

**7. Clarifications/negotiated points are as follows:**

**a. Section 3.2 (Payment Terms) of the Standard Provisions, is hereby modified and amended as follows:**

- (i) the reference to “forty (40) days of receipt of a proper invoice” is hereby deleted in its entirety and replaced with “thirty (30) days of date of the invoice.”
- (ii) the last sentence is hereby deleted in its entirety and replaced with the following sentence in lieu thereof:

“Subject to confidentiality agreements between Contractor and third parties, and no more than annually, FIU, at its expense, may audit Contractor’s books and records to determine whether Contractor extended the correct pricing. Any third-party auditor used must be approved by Contractor, and must execute a non-disclosure agreement. Contractor may dispute the results of any audit, and will refund any overcharges to FIU (and FIU will refund any undercharges to Contractor). Other conditions may apply. Notwithstanding the foregoing, nothing contained herein will prevent parties from complying with the requirements of Chapter 119.”

**b. Section 3.4 (Insurance) of the Standard Provisions is hereby modified and amended as follows:**

- (i) the following sentence “Unless previously authorized by FIU, the policies required above shall be issued on a “first dollar” basis with no deductible or self-insured retention” is hereby deleted in its entirety.
- (ii) the following sentence “FIU, upon request, reserves the right to obtain a copy of the policies requested above” is hereby deleted in its entirety.

**c. Section 3.5 (Worker’s Compensation) of the Standard Provisions is hereby modified and amended as follows:**

- (i) the following sentence “Successful Respondent will agree that any release or settlement entered into by Respondent under a workers’ compensation claim shall include, in its settlement and release the State of Florida, the Florida Board of Governors, the FIU Board of Trustees, FIU, and their officers, employees, and agents” is hereby deleted in its entirety.

- d. **Section 3.26 (Export Control) of the Standard Provisions is hereby deleted in its entirety.**

- e. **Section 3.28 (Warranties) of the Standard Provisions is hereby modified and amended by adding the following at the end of the aforementioned Section:**

“Contractor’s aforementioned warranties will be limited to Office Depot-branded products only, and for all other products, Contractor will pass through to FIU all manufacturer-supplied end-user warranties.”

- f. **The parties acknowledge and agree that requirements outlined in Section 3.34 (Subcontractors) of the Standard Provisions are not applicable for those vendors who are generally involved in the day-to-day business operations of Contractor, including, but not limited to, third party logistics vendors, delivery carriers, and customer service providers. Furthermore, FIU acknowledges and agrees that Contractor, without obtaining written consent from FIU, may subcontract duties under any resulting contract to those vendors who are generally involved in the day-to-day business operations of Contractor, including, but not limited to, third-party logistics vendors, delivery carriers, and customer service providers.**

- g. **Section 3.35 (Termination for Cause) of the Standard Provisions, is hereby modified and amended as follows:**

(i) the following phrase “and Successful Respondent shall be liable to FIU for any reasonable excess costs for such similar or identical services included within the terminated part of the Contract” is hereby deleted in its entirety.

(ii) the following phrase “[a]dditionally, FIU may require Successful Respondent to transfer title and deliver immediately to FIU in the manner and to the extent directed by FIU, such partially completed work, including, where applicable, reports, working papers and other documentation, as Successful Respondent has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated” is hereby deleted in its entirety.

- h. **Section 3.36 (Termination for Convenience) of the Standard Provisions is hereby deleted in its entirety and replaced with the following:**

“Either party may terminate the Contract for its convenience, by written notice to the other party at least ninety (90) days before the effective date of termination, if that party determines that termination is in its best interest. Contractor shall be



paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall either party be entitled to recover lost profits.”

- i. **Section 3.40 (Information Technology) of the Standard Provisions is hereby deleted in its entirety.**
- j. **Section 3.53 (Assignment/Modification of Contract) of the Standard Provisions is hereby deleted in its entirety and replaced with the following:**

“Neither party may assign this Agreement without the prior written consent of the other party, except that Contractor (i) may assign this Agreement to any of its subsidiaries or affiliates at any time, or (ii) may assign this Agreement in connection with the transfer or sale of all or substantially all of its business related to this Agreement.”

- k. **Service Vendor (Individual Trade) Insurance Language is hereby modified and amended as follows:**
  - (i) Contractor’s policies are primary and non-contributory to the extent that an indemnity is owed under the Contract.
  - (ii) the following sentence “Unless previously authorized by FIU, the policies required above shall be issued on a “first dollar” basis with no deductible or self-insured retention” is hereby deleted in its entirety.
  - (iii) the following sentence “The policies shall carry an endorsement to provide thirty (30) days prior written notice to FIU in the event of cancellation or reduction in coverage or amount” is hereby deleted in its entirety and replaced with: “Contractor will provide thirty (30) days written notice to FIU in the event of cancellation.”
  - (iv) the following sentence “FIU, upon request, reserves the right to obtain a copy of the policies requested above” is hereby deleted in its entirety.

***REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.***

E-ITN #2022-00057

IN WITNESS WHEREOF, the parties have affixed their signatures, effective on the date firstwritten above.

FOR THE CONTRACTOR:

**ODP BUSINESS SOLUTIONS, LLC**

DocuSigned by:  
BY: Brian Abromovage  
30BC89D4630C4F6 ..



Brian Abromovage VP, BSD

NAME & TITLE:

DATE:  
6/20/2022

FOR FIU:

**THE FLORIDA INTERNATIONAL  
UNIVERSITY BOARD OF TRUSTEES**

BY: Kenneth Jessell  
Kenneth Jessell Interim University President

NAME & TITLE:

DATE:

Approved as to  
form and legality  
FIU Attorney

Date: 6-9-22