

Memorandum



Date: October 20, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

Agenda Item No. 8(F)(2)

From: Carlos A. Gimenez
Mayor

Subject: Recommendation for Approval to Award Midrange Server Solution

Recommendation

It is recommended that the Board of County Commissioners (Board) approve a competitive contract award, *Contract No. RFP-01395, Midrange Server Solution*, for the Information Technology Department (ITD). The Solution will provide the County with hardware and maintenance support services for the midrange servers, including applicable operating systems and related software.

The County's midrange platform was originally purchased from International Business Machines, Inc. (IBM) in 1995 for the Clerk of Courts and Water and Sewer Department. In 2003, the County replaced this original set of equipment with a new platform (pSeries) facilitating the optimization of over 30 systems into two physical servers supporting these multiple workloads. The County again upgraded to the current pSeries-7 midrange platform now supporting 200 independent systems running a variety of workloads including more than 223 Oracle critical databases for various County departments. This platform is nearing its "end of life" cycle.

In an effort to address this issue and to open competition, on September 2018, a draft scope of work for this solicitation was provided to several industry leading firms to obtain feedback and determine market interest. Five prospective vendors responded, of which four showed interest to a future solicitation. On November 27, 2019, a competitive Request for Proposals was issued for a midrange server solution. Over 2,022 vendors were notified, of which 68 viewed the solicitation, and three downloaded the solicitation package. Two proposers responded to the solicitation, including one "No Bid." IBM, the sole proposer and local vendor, is being recommended for award. Due to the time required to conduct highly complex technical negotiations, as well as impacts from COVID-19, the award of this project was delayed.

Scope

The scope of this item is countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact for the five-year term is \$2,975,761. The current IBM contract, L9130-5/21, is valued at \$32,077,500 and is in the third option-to-renew which will expire on October 31, 2022. The County will purchase hardware and related maintenance support services for the midrange servers under the new contract. All other IBM hardware, software, maintenance, support, professional services and cloud solutions will be purchased under the legacy contract.

IBM products support critical enterprise-wide departmental functions and software applications, which include but are not limited to the Financial, Accounting, Human Resources (including payroll), RER permitting and Criminal Justice Information Systems. The services covered under the legacy contract are broader than this contract, thereby resulting in significant differences of in the allocations in both contracts.

Department	Allocation	Funding Source	Contract Manager
Information Technology	\$2,975,761	Internal Service Funds	Jorge Mederos
Total:	\$2,975,761		

Track Record/Monitor

Sade Chaney of the Internal Services Department is the Procurement Contracting Manager.

Delegated Authority

If this item is approved, the County Mayor or County Mayor’s designee will have the authority to exercise all provisions of the contract, including any cancellation or extension provisions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Vendor Recommended for Award

A Request for Proposals was issued under full and open competition. Two responses were received, including one “No Bid.”

Vendor	Principal Address	Local Address*	Number of Employee Residents	Principal
			1) Miami-Dade 2) Percentage*	
International Business Machines Corporation	New Orchard Road Armonk, NY	1 Alhambra Plaza Suite 1415 Miami, FL	1,300	Virginia M. Rometty
			1.1%	

*Provided pursuant to Resolution No. R-1011-15. Percentage of employee residents is the percentage of vendor’s employees who reside in Miami-Dade County as compared to the vendor’s total workforce.

Vendor Not Recommended for Award

Vendor	Principal Address	Local Address	<u>Reason for Not Recommending</u>
United Data Technologies Inc.	2900 Monarch Lakes Boulevard Miramar, FL	No	No Bid*

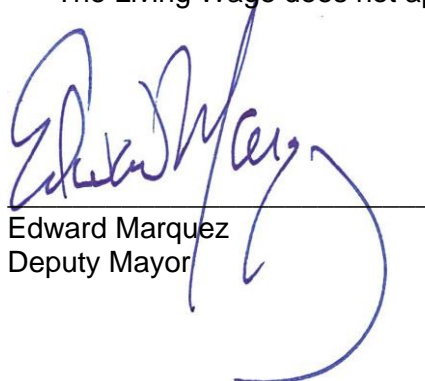
*A “No Bid” means the vendor responded indicating it would not be providing an offer.

Due Diligence

Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with the Internal Services Department’s Procurement Guidelines to determine vendor responsibility, including verifying corporate status and that there are no performance and compliance issues. The lists that were referenced included convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to vendor responsibility.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision applies.
- The Small Business Enterprise Selection Factor and Local Preference were applied.
- The Living Wage does not apply.



Edward Marquez
 Deputy Mayor



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: October 20, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(F)(2)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(2)
10-20-20

RESOLUTION NO. _____

RESOLUTION APPROVING AWARD OF CONTRACT NO. RFP-01395 TO INTERNATIONAL BUSINESS MACHINES CORPORATION FOR PURCHASE OF MIDRANGE SERVER SOLUTION FOR THE INFORMATION TECHNOLOGY DEPARTMENT IN A TOTAL AMOUNT NOT TO EXCEED \$2,975,761.00 FOR THE FIVE-YEAR TERM; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY CANCELLATION OR EXTENSION PROVISIONS, PURSUANT TO SECTION 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA AND IMPLEMENTING ORDER 3-38

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Board approves award of Contract No. RFP-01395 to International Business Machines Corporation for the purchase of midrange server solution for the Information Technology Department, in substantially the form attached and made a part hereof, in a total amount not to exceed \$2,975,761.00 for the five-year term.

Section 2. This Board authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and to exercise all provisions of the contract, including any cancellation or extension provisions, pursuant to 2-8.1 of the Code of Miami-Dade County and Implementing Order 3-38.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

- | | |
|--------------------------------|----------------------|
| Audrey M. Edmonson, Chairwoman | |
| Rebeca Sosa, Vice Chairwoman | |
| Esteban L. Bovo, Jr. | Daniella Levine Cava |
| Jose "Pepe" Diaz | Sally A. Heyman |
| Eileen Higgins | Barbara J. Jordan |
| Joe A. Martinez | Jean Monestime |
| Dennis C. Moss | Sen. Javier D. Souto |
| Xavier L. Suarez | |

The Chairperson thereupon declared this resolution duly passed and adopted this 20th day of October, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.
Hugo Benitez

Mid-Range Server Solution, Hardware/Software Maintenance, and Migration
Contract No. RFP-01395

THIS AGREEMENT FOR THE PROVISION OF MID-RANGE SERVER SOLUTION, HARDWARE/SOFTWARE MAINTENANCE, AND MIGRATION (THE "AGREEMENT") MADE AND ENTERED INTO BY AND BETWEEN INTERNATIONAL BUSINESS MACHINES CORPORATION ("IBM"), A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF NEW YORK, HAVING ITS PRINCIPAL OFFICE AT 1 NEW ORCHARD ROAD, ARMONK, NEW YORK, 10504 (THE "CONTRACTOR"), AND MIAMI-DADE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, HAVING ITS PRINCIPAL OFFICE AT 111 NW 1ST STREET, MIAMI, FLORIDA 33128 (THE "COUNTY").

WITNESSETH:

WHEREAS, the Contractor has offered to provide a Mid-Range Server Solution, Hardware/Software Maintenance, and Migration (the "System") on a non-exclusive basis, that shall conform to the Scope of Services (see Appendix A); Miami-Dade County's Request for Proposals ("RFP") No. 01395 and all associated addenda and attachments and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated January 20, 2020, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the County desires to procure from the Contractor such Solution for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), the Price Schedule (Appendix B), all other appendices and Attachments hereto, all amendments issued hereto, RFP No. 01395 and all associated addenda, and the Contractor's Proposal.
- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.
- d) The word "Contractor" to mean International Business Machines Corporation ("IBM") and its permitted successors.
- e) The word "Days" to mean Calendar Days.

- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words "Extra Work" or "Additional Work" to mean additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- i) The words "Licensed Software" to mean the computer programs licensed by IBM under this Agreement.
- j) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- j) The words "Scope of Services" to mean the "Scope of Services" that details the work to be performed by Contractor under a mutually agreed upon Statement of Work (SOW) appended hereto as Appendix A.
- k) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- m) The word "Work" to mean matters and things required to be done by the Contractor in accordance with the provisions of this Contract.
- n) The term "Hardware" to mean the new hardware components sold by the IBM under this Agreement.
- o) The term "Machine" to mean a hardware device, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment) that IBM may provide to the County.
- p) The term "Service" to mean a performance of a task, assistance, support, or access to resources (such as information database) that IBM makes available to the County.
- q) The term "Program" to mean an IBM-branded computer program and related material available for license from IBM subject to payment of charges.
- r) The term "Attachments" to mean documents that are part of this Agreement that contain terms that may apply to more than one Product or Service transaction.
- s) The term "Transaction Documents" to mean documents that contain specific details and terms related to each individual transaction.
- t) The term "Date of Installation" to mean the following:
- a. For an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it or, if the County defers installation, makes it available to the County for subsequent installation by IBM;
 - b. For a County-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period; and for a Program:
 - i. Basic license, the second business day after the Program's standard transit allowance period,
 - ii. the date (specified in a Transaction Document) on which IBM authorizes the County to make a copy of the Program, and;

- iii. Chargeable component (also called a feature), the date the County uses the chargeable component or copy. The County agrees to notify IBM of the chargeable component's Date of Installation.

ARTICLE 2. ORDER OF PRECEDENCE AND ATTACHMENTS DOCUMENTS

ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) Attachments herein, 3) the Scope of Services (Appendix A), 4) the Miami-Dade County's RFP No. 01395 and any associated addenda and attachments thereof, and 5) the Contractor's Proposal.

Notwithstanding the foregoing, the parties acknowledge and agree that upon assignment of any Supplement in accordance with Section 12.1 of the Installment Payment Agreement, the assignee shall (1) only assume Contractor's obligations under the Installment Payment Agreement and such Supplement and (2) only the terms of such Supplement, which incorporate the terms of the Installment Payment Agreement (not any other terms regardless of the order of precedence described herein with the exception of Article 33) shall be applicable to the assignee. Contractor shall not be relieved of its obligations hereunder as a result of any such assignment unless the County expressly consents thereto, nor shall any rights or obligations of the County be changed except as described herein.

ATTACHMENTS AND TRANSACTION DOCUMENTS

Additional terms for Products and Services are included in documents called "Attachments" and Transaction Documents" provided by the Contractor. In general, Attachments contain terms that may apply to more than one Product or Services transaction, while Transaction Documents (such as a statement of work, supplement, schedule, invoice, exhibit, change authorization, or addendum) contain specific details and terms related to each individual transaction. The County may receive one or more Transaction Documents for a single transaction. Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions.

This Contract shall include the following Attachments:

Attachment 1:

- IBM Client Relationship Agreement (CRA)
- IBM Delegation of Authority

Attachment 2:

- Master Services Attachment for Service Elite
- Statement of Work for ServiceElite – Managed Technical Support (MMLE Tool)
- Statement of Work for ServiceElite -- Custom Technical Support
- Statement of Work for ServiceElite -- Proactive Support Service
- Statement of Work for ServiceElite – Machine Control Program Remote Support
- Agreement for Power Systems Temporary Capacity on Demand
- Supplement for Power Systems Temporary Capacity on Demand

Attachment 3:

- International Passport Advantage Agreement

Attachment 4:

- Installment Payment Agreement For State and Local Government

Exhibit 1:

- Security Requirements

Should there be any inconsistency between the terms and conditions of this Agreement and any terms referenced in any Attachments to this Agreement, the terms and conditions of this Agreement shall take precedence unless modified by a mutually agreed- to Amendment to this Agreement.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- e) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective on _____ and shall continue through the last day of the 60th month. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar

days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the County

a) to the Project Manager:

Miami-Dade County Information Technology Department
Attention: Jorge Mederos
Information Technology Department
5680 SW 87th Avenue
Miami, Florida 33173
Phone: (305) 596-8862
E-mail: Jorge.Mederos@miamidade.gov

and,

b) to the Contract Manager:

Miami-Dade County
Internal Services Department, Strategic Procurement Division
Attention: Chief Procurement Officer
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974
Phone: (305) 375-4900
E-mail: Namita.Uppal@miamidade.gov

(2) To the Contractor

IBM Corporation
1 Alhambra Plaza, Suite 1415
Coral Gables, FL 33134
Attention: Emily Loos
Phone: 305-206-5022
E-mail: eloos@us.ibm.com

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work to be performed under this Contract. The compensation for all Work performed under this Contract, including all costs associated with such Work, shall be in accordance with the Price Schedule (see Appendix B). The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk

and expense.

With respect to travel costs and travel-related expenses, the Contractor agrees to adhere to Section 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses, including employee lodging, transportation, per diem, and all miscellaneous cost and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

ARTICLE 8. PRICING

Prices shall remain firm and fixed for the term of the Contract, including any option or extension periods; however, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof.

ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor pursuant to Appendix B – Price Schedule. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. All firms, including Small Business Enterprises, providing goods and services to the County, shall receive payment to maintain sufficient cash flow. In accordance with Section 218.74 of the Florida Statutes, and Section 2-8.1.4 of the Code of Miami-Dade County, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. Billings from prime Contractors under services and goods contracts with the County or Public Health Trust, that are Small Business Enterprise contract set-aside, bid preference or contain a subcontractor goal, shall be promptly reviewed and payment made by the County or Trust on those amounts not under dispute within fourteen (14) calendar days of receipt of such billing by the County or the Trust pursuant to Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Code of Miami-Dade. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

In accordance with Miami-Dade County Implementing Order 3-9, Accounts Receivable Adjustments, if money is owed by the Contractor to the County, whether under this Contract or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Contractor under this Contract. Such retained amount shall be applied to the amount owed by the Contractor to the County. The Contractor shall have no further claim to such retained amounts which shall be deemed full accord and satisfaction of the amount due by the County to the Contractor for the applicable payment due herein

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County Finance Department
111 NW 1st Street, 26th Floor
Miami, FL 33128
Attention: Shared Services Payable Unit

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE 10. INDEMNIFICATION AND INSURANCE

The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully

indemnify, defend, and hold harmless the County, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors, provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the County. Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

The Contractor shall furnish to the **Internal Services Department, Procurement Management Division, 111 NW 1st Street, 13th Floor, Miami, FL 33128**, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
- B. Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence \$2,000,000 in the aggregate. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$1,000,000 combined single limit.
- D. Professional Technology Errors and Omissions Liability insurance coverage for actual or alleged breach of duty, neglect, error, misstatement, misleading statements or omission, solely for acts or omissions committed by Contractor in providing professional services for County with a minimum per claim and aggregate limit of \$5,000,000. Coverage includes network security, unauthorized access, unauthorized use, receipt or transmission of a malicious code, denial of service attack, unauthorized disclosure or misappropriation of private information, privacy liability, notification costs, credit card monitoring, and fine & penalties incurred by the County.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength, by Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Financial Services.

**NOTE: CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY
111 NW 1st STREET
SUITE 2340
MIAMI, FL 33128**

ARTICLE 11. SECURITY REQUIREMENTS

The Contractor and any of its employees or Subcontractors, participating in all migration activities, and any other services that require physical or logical access to the County's network located at either Miami Dade Police Department (MDPD), and/or Miami Dade Corrections Department (MDCR) must:

MDPD

Review the Federal Bureau of Investigation's (FBI) CJIS Security Addendum, attached herein as Annex A, and sign the FBI's CJIS Security Addendum Certification upon completion of a fingerprint, criminal background check, proof of citizenship or authorization to be employed in the United States, and successful passing of the CJIS Security Awareness Test, attached hereto as Annex B, biennially.

MDCR

Undergo all necessary County screening, fingerprinting, and background checks as required by MDCR regulations, and complete the required documentation attached to this Agreement as Exhibit 1 – Security Requirements, Annex A and Annex B. Those who do not pass all security protocols relating to contractors will be required to be escorted by authorized County personnel when on the premises or monitored when accessing County Computer infrastructure.

ARTICLE 12. EMPLOYEES OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, 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 Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

- a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Contractor shall be bound by all determinations or orders and shall promptly comply with every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) In the event of such dispute, the parties to this Agreement authorize the County Mayor or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Mayor's

purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Mayor within 10 days of the occurrence, event or act out of which the dispute arises.

- e) The County Mayor may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Mayor participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Mayor for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Mayor is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Mayor, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

ARTICLE 15. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendices to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 17. AUDITS

The County, or its duly authorized representatives and governmental agencies, shall until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to Section 2-481 of the Code of Miami-Dade County, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County. Notwithstanding the above, the parties acknowledge that a one-time assignment of Contractor's rights under the Installment Payment Supplement No. 079512 pursuant to the Installment Payment Agreement to IBM Credit LLC shall not require written consent of the County provided that IBM Credit LLC shall be required to comply with Article 33, Vendor Registration/Conflict of Interest. Under the conditions of such assignment, IBM shall continue to act as Contractor and perform all duties and obligations under the Contract. All future assignments shall be subject to the express written consent of the County.

ARTICLE 20. SUBCONTRACTUAL RELATIONS

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County in the event the County finds the Contractor in breach of this Contract, permitting the County to request completion by the Subcontractor of its performance obligations under the subcontract. The clause shall include an option for the County to pay the Subcontractor directly for the performance by such Subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

ARTICLE 22. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 23. TERMINATION AND SUSPENSION OF WORK

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the Code of Miami-Dade County.
- d) In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor.
- e) Effective Date of Termination. Termination due to a material breach of Articles 28 (Confidentiality), shall be effective on notice. In all other cases, termination shall be effective thirty (30) days after notice of termination to the defaulting party if the defaults have not been cured within such thirty (30) day period.
- f) Termination for Convenience. In the event that the County exercises its right to terminate this Agreement or any Transaction Document, the Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
 - i. stop work on the date specified in the notice ("the Effective Termination Date");
 - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
 - iii. cancel orders;
 - iv. assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;

- v. take no action which will increase the amounts payable by the County under this Agreement; and
- g) In the event that the County exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Articles herein for the:
 - i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
 - ii. non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement, but not incorporated in the Services.

All compensation pursuant to this Article are subject to audit.

- h) Termination and Withdrawal of a Service. Either party may terminate a Service transaction if the other materially fails to meet its obligations concerning the service. The County may terminate a Service by notice to the Contractor provided that the County has met all minimum requirements and paid any adjustment charges specified in the applicable Attachments and Transaction Documents. The Termination and Withdrawal of a Service by the County may also establish a basis for Default under Section __ of this Agreement. For a maintenance Service, the County may terminate without adjustment charge, provided any of the following circumstances occur:
 - i) The County permanently removes the eligible Product, for which the Services is provided, from productive use within the County's Enterprise;
 - ii. the eligible location, for which the Service is provided, is no longer controlled by the County (for example, because of sale or closing of the facility); or
 - iii. the Machine has been under maintenance Service for at least one year and the County gives the Contractor one month's written notice prior to terminating the maintenance Service.

The Contractor may withdraw a Service or support for an eligible end of life product on three (3) months written notice to the County. If the Contractor withdraws a Service for which the County has prepaid and the Contractor has not yet fully provided it to the County, the Contractor will give the County a prorated refund notwithstanding any other provision of this Agreement. The prorated refund shall be calculated based on the date of withdrawal of services and the length of the Service Agreement, or a percentage of the unused Service minus the value of the Service already provided, whichever is greater.

ARTICLE 24. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing, and in addition to those instances referred to herein as a breach, an Event of Default shall include the following:
 - i. the Contractor has not delivered Deliverables on a timely basis;
 - ii. the Contractor has refused or failed to supply enough properly skilled staff personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;

- vi. the Contractor has failed to provide "adequate assurances" as required under subsection b below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with the terms of this Agreement. Until the County receives such assurances, the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed timeframe, the County may:
- i. treat such failure as a repudiation of this Agreement; and
 - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 26. CONTRACTOR'S LIMITATION OF LIABILITY AND PATENT AND COPYRIGHT INDEMNIFICATION

The Contractor's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by the County up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the product or service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to the Contractor, its subsidiaries, contractors, and suppliers. The Contractor will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against the County that a Contractor's product acquired under this Agreement infringes a patent or copyright, the Contractor will defend the County against that claim and pay amounts finally awarded by a court against the County or included in a settlement approved by the Contractor, provided that the County promptly (i) notifies the Contractor in writing of the claim, (ii) supplies information requested by the Contractor, and (iii) allows the Contractor to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

The Contractor has no responsibility for claims based, in whole or part, on Non-IBM products, items not provided by the Contractor, or any violation of law or third party rights caused by County's content, materials, designs, specifications, or use of a non-current version or release of a Contractor's product when an infringement claim could

have been avoided by using a current version or release.

ARTICLE 27. CONFIDENTIALITY

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 28. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology

software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 29. PROPRIETARY RIGHTS

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection with the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.
- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 30. GRANT OF LICENSE

Licenses will be granted as set forth in the IBM Client Relationship Agreement set forth under Attachment 1, and IBM's International Passport Advantage Agreement, which incorporates by reference IBM's International Program License Agreement (IPLA), including License Information (LI) documents.

ARTICLE 31. WARRANTIES

Contractor represents and warrants to the County that the devices and associated hardware shall be free from defects in materials and workmanship and shall conform in all material respect to the specifications for the Contract term.

ARTICLE 32. SYSTEM RELATED DOCUMENTATION

The Solution-related documentation shall consist of any and all operators and users manuals, training materials, guides, listings, design documents, specifications, flow charts, data flow diagrams, commentary, and other materials and documents that explain the performance, function or operation of individual programs and the interaction of programs within the Solution: control file and scripts used to compile, link, load and/or make the applications and systems; test scripts, test plans and test data and other materials for use in conjunction with the applicable software. The documentation will in all cases be fully applicable to the use of the programs with the equipment, and will identify and reflect any particular features of the equipment which may affect the normal use and operation of the Solution.

ARTICLE 33. VENDOR REGISTRATION/CONFLICT OF INTEREST**a) Vendor Registration**

The Contractor shall be a registered vendor with the County – Internal Services Department, Strategic Procurement Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

1. **Miami-Dade County Ownership Disclosure Affidavit**
(Section 2-8.1 of the Code of Miami-Dade County)
2. **Miami-Dade County Employment Disclosure Affidavit**
(Section 2.8.1(d) (2) of the Code of Miami-Dade County)
3. **Miami-Dade County Employment Drug-free Workplace Certification**
(Section 2-8.1.2(b) of the Code of Miami-Dade County)
4. **Miami-Dade County Disability and Nondiscrimination Affidavit**
(Section 2-8.1.5 of the Code of Miami-Dade County)
5. **Miami-Dade County Debarment Disclosure Affidavit**
(Section 10.38 of the Code of Miami-Dade County)
6. **Miami-Dade County Vendor Obligation to County Affidavit**
(Section 2-8.1 of the Code of Miami-Dade County)
7. **Miami-Dade County Code of Business Ethics Affidavit**
(Sections 2-8.1(j), 2-11.1(b)(1) through (6) and (9), and 2-11.1(c) of the Code of Miami-Dade County)
8. **Miami-Dade County Family Leave Affidavit**
(Article V of Chapter 11 of the Code of Miami-Dade County)
9. **Miami-Dade County Living Wage Affidavit**
(Section 2-8.9 of the Code of Miami-Dade County)
10. **Miami-Dade County Domestic Leave and Reporting Affidavit**
(Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)
11. **Miami-Dade County E-Verify Affidavit**
(Executive Order 11-116)
12. **Miami-Dade County Pay Parity Affidavit**
(Resolution R-1072-17)
13. **Miami-Dade County Suspected Workers' Compensation Fraud Affidavit**
(Resolution R-919-18)
14. **Subcontracting Practices**
(Section 2-8.8 of the Code of Miami-Dade County)
15. **Subcontractor/Supplier Listing**
(Section 2-8.1 of the Code of Miami-Dade County)
16. **Form W-9 and 147c Letter**
(as required by the Internal Revenue Service)
17. **FEIN Number or Social Security Number**
In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
 - Identification of individual account records
 - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
 - Tax reporting purposes
 - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records
18. **Office of the Inspector General**
(Section 2-1076 of the Code of Miami-Dade County)
19. **Small Business Enterprises**
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2
20. **Antitrust Laws**
By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

b) Conflict of Interest and Code of Ethics

Section 2-11.1(d) of the Code of Miami-Dade County requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Code of Miami-Dade County relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1 (y), the Miami-Dade County Commission on Ethics and Public Trust (Ethics Commission) shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance.

ARTICLE 34. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Implementing Order 3-38; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists,

County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 35. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including, but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Small Business Enterprises Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics."
- e) Section 10-38 of the Code of Miami-Dade County, "Debarment of Contractors from County Work."
- f) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave."
- g) Section 21-255 of the Code of Miami-Dade County, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.
- h) The Equal Pay Act of 1963, as amended (29 U.S.C. 206(d)).
- i) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited."
- j) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 et seq.) "Discrimination."
- k) Chapter 22 of the Code of Miami-Dade County (§ 22-1 et seq.) "Wage Theft."
- l) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 et seq.) "Business Regulations."
- m) Any other laws prohibiting wage rate discrimination based on sex.

Pursuant to Resolution R-1072-17, by entering into this Contract, the Contractor is certifying that the Contractor is in compliance with, and will continue to comply with, the provisions of items "h" through "m" above.

The Contractor shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the County or Contractor for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Contractor. The Project Manager shall verify the certification(s), license(s), permit(s), etc. for the Contractor prior to authorizing work and as needed.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the

Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 36. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 37. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the award of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 38. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 39. BANKRUPTCY

In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this Agreement shall terminate and be of no further force and effect.

ARTICLE 40. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue shall be in state court, Miami-Dade County, Florida.

ARTICLE 41. COUNTY USER ACCESS PROGRAM (UAP)**a) User Access Fee**

Pursuant to Section 2-8.10 of the Code of Miami-Dade County, this Contract is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from the solicitation referenced on the first page of this Contract, and the utilization of the County Contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all Contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Contractor providing goods or services under this Contract shall invoice the Contract price and shall accept as payment thereof the Contract price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Contractor participation in this invoice reduction portion of the UAP is mandatory.

b) Joint Purchase

Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County Contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Contractor must obtain the participation number from the entity prior to filling any order placed pursuant to this Section. Contractor participation in this joint purchase portion of the UAP, however, is voluntary. The Contractor shall notify the ordering entity, in writing, within three (3) business days of receipt of an order, of a decision to decline the order. For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Contractor shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

The County shall have no liability to the Contractor for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Contractor and shall be paid by the ordering entity less the 2% UAP.

c) Contractor Compliance

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 24 of this Contract.

ARTICLE 42. FIRST SOURCE HIRING REFERRAL PROGRAM

Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all contracts for goods and services, the Contractor, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify the South Florida Workforce Investment Board ("SFWIB"), the designated Referral Agency, of the vacancy and list the vacancy with SFWIB according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the SFWIB. If no suitable candidates can be employed after a Referral Period of three to five days, the Contractor is free to fill its vacancies from other sources. Contractor will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of contract until Contractor performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of \$1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the FSHRP are available at <https://iapps.careersourcesfl.com/firstsource/>.

ARTICLE 43. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The Contractor shall comply with the Public Records Laws of the State of Florida, including by not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, ISD-VSS@MIAMIDADE.GOV, 111 NW 1ST STREET, SUITE 1300, MIAMI, FLORIDA 33128

ARTICLE 44. SURVIVAL

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

ARTICLE 45. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

ARTICLE 46. MANNER OF PERFORMANCE

The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the written request of the County explaining cause, the Contractor shall promptly remove from the Project any of the Contractor's employee(s), Subcontractor, or any other person performing Services hereunder for cause. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.

ARTICLE 47. NO PERSONAL DATA

The County will not provide to Contractor personal data that are subject to the European General Data Protection Regulations (GDPR) requirements.

ARTICLE 48. FORCE MAJEURE

48.1 Performance by each party shall be pursued with commercially reasonable efforts in all requirements under this Agreement; however, except as otherwise expressly provided herein, neither party shall be liable to the other for any loss or damage for delay due to causes that (i) were beyond the reasonable control and (ii) were not caused by the negligence or lack of commercially reasonable efforts of the affected party or its subcontractors or suppliers. The parties agree that, provided the conditions stated in (i) and (ii) above apply, the following are causes or events of force majeure: acts of civil or military authority (including courts and regulatory agencies), acts of God (excluding normal or seasonal weather conditions), riot or insurrection, inability to obtain required permits or licenses, blockades, embargoes, sabotage, epidemics and unusually severe floods. The party affected shall provide written notice to the other party indicating the nature, cause, date of commencement thereof, the anticipated extent of such delay and whether it is anticipated that any completion or delivery dates will be affected thereby, and shall exercise due diligence to mitigate the effect of the delay.

48.2 In the event of any delay resulting from such causes, and provided the affected party has promptly notified the other and exercised commercially reasonable efforts as provided in subsection a) above the time for performance under this Agreement (including the payment of monies) shall be extended for a period of time reasonably necessary to overcome the effect of such delay.

ARTICLE 49. EXTENSION OF TIME NOT CUMULATIVE

In the event the Contractor shall be delayed concurrently by two or more of the causes identified in Article 21, "Force Majeure" above, the Contractor shall be entitled to a separate extension of time for each one of the causes but only one time period of extension shall be granted for the delay. In addition, the Contractor shall not be entitled, by reason of a delay, to an extension of time for the completion of the overall Work unless the overall Work is necessarily affected by the delay. Accordingly, in the event of a delay, the Contractor shall proceed continuously and diligently with the performance of the unaffected portions of the Work.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Contractor

Miami-Dade County

By: Emily B. Loos
 Name: Emily B Loos
 Title: Client Executive
 Date: September 29, 2020
 Attest: See Delegation of Authority
 Corporate Secretary/Notary Public

By: _____
 Name: Carlos A. Gimenez
 Title: Mayor
 Date: _____
 Attest: _____
 Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form and legal sufficiency

 Assistant County Attorney

APPENDIX A

SCOPE OF SERVICES

The Scope of Services includes a set of end to end activities to ensure the success of the project. These services include both chargeable and nonchargeable activities. Some of the activities are sequential in nature and some can be accomplished in parallel. This is a summary of the high-level activities.

Project Kickoff – This meeting is to ensure that the County and IBM resources are defined, general project dates are reviewed and agreed upon, responsibilities and the project change processes are understood.

Systems Assurance – This meeting is to review in great detail all of the prerequisites, corequisites and physical requirements for the systems. This meeting is on the critical path of the project as the systems cannot be built until this is reviewed and agreed upon by the County. This meeting includes multiple IBM resources to ensure that all aspects are considered when planning for the new systems. This is a no charge activity by IBM.

Custom Hardware Build – The configuration that has been proposed will be manufactured to custom fit the County's specific requirements.

Data Center preparation – One of the outputs from the Systems Assurance is all of the specifications that the County must provide from a power and cabling perspective. This includes physically being on site with Computer Room Operations to ensure that IBM adheres to all County policies and best practices in the Data Center. This is a no charge activity by IBM.

Hardware Installation – The delivery, staging and installation in the Data Center is orchestrated between the Building Management, Computer Room Operations, Network and Systems Administration teams. This includes the physical installation including connecting to the County's Local Area network (LAN) and the Storage Area network (SAN). The installation includes updating all components to the latest firmware levels, testing the automated notifications to IBM and skills transfer on the best practices on how to maintain these. This is a mix of chargeable and no charge activities by IBM. The result of this is the installation ("Code 20") of the system by IBM.

Software Infrastructure Installation and Configuration – This involves the activities of installing and configuring following the best practices of the administrative and management portions of the systems. This involves a great deal of customized training with hands on activity and a number of technical decisions by the County. The coordination, testing and validation with the LAN, SAN and firewall groups is critical during these activities. These activities are detailed below.

Spectrum Scale Implementation – This is a specific software product that provides centralized management of the systems for the Systems and Database administrators. This has a prerequisite of having the Software Infrastructure configured and has a dedicated subject matter expert for this activity. This involves a great deal of customized training with hands on activity and a number of technical decisions by the County. The coordination, testing and validation with the LAN, SAN and firewall groups is critical during this activity. This activity is detailed below.

Logical Partition (LPAR) New Builds and Migrations – During the project planning the strategy for moving the existing workloads from the POWER7 servers to the POWER9 servers will be decided. There are multiple methods that will be deployed based on software dependencies, end user business and testing schedules and personnel schedules. This involves a great deal of customized training with hands on activity and a number of technical decisions by the County. The coordination, testing and validation with other ITD departments such as LAN, SAN, Database, Application and firewall groups is critical during this activity. In addition, the coordination extends to other County End User Departments (such as WASD, MDPD, Corrections, etc.) as well as Non-County End User agencies (such as the Clerk of the Courts, FDLE, municipal police agencies, etc.). During this period of twelve weeks, the IBM Project Manager will have weekly meetings to coordinate and ensure that the project is on time and to work through any issues. These activities are detailed below.

Classroom Training – These five formal education classes can be run when the scheduling permits throughout the project. The County Project Manager will coordinate with the IBM Project Manager on the correct timing for each of the classes. These activities are detailed below.

Discontinuance of POWER7s – Based on the final workload being moved to the POWER9s, the three POWER7s will be deinstalled, packed and picked up by IBM for disposal. These activities are detailed below.

Based on the request from ITD, the following is the revised project timeline. This is intended to replace the timeline in the RFP response.

Project Timeline	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Project Kickoff	█																	
Systems Assurance	█																	
Data Center Readiness Walk Through	█																	
Hardware Ordered	█																	
Project Planning Session & Worksheets		█																
Hardware Delivered			█															
Hardware Installation			█	█														
Software Infrastructure Installation				█	█													
Spectrum Scale Implementation					█	█												
LPAR New Builds & Migrations						█	█	█	█	█	█	█	█	█	█	█	█	█
Customized Training		█	█	█	█	█												
Classroom Training					█			█			█			█				█
Discontinuance of POWER7s																		█

The IBM Client Relationship Agreement under Attachment 1 and the listed IBM agreements contained in Attachments 2 and 3 are incorporated into these Statements of Work (“SOWs”), which incorporate the Exhibits in each SOW and any applicable attachments, will govern the Products and Services as specified in each SOW. The Agreement and these SOWs (and any applicable Attachments) represent the complete agreement regarding this subject matter and replace any prior oral or written communications between Miami-Dade County and IBM. Any alternations to this SOW including schedule changes will be processed in accordance with the procedure as described in Exhibit A, “Project Change Control Procedure.”

In entering into each SOW, Miami-Dade County is not relying upon any representation made by or on behalf of IBM that is not specified in the Agreement or each SOW, including, without limitation, the actual or estimated completion date, number of hours to provide any of the Services, charges to be paid, or the results of any of the Products or Services to be provided under each SOW.

SOW # 1**POWER 9 MIGRATION SERVICES AND SPECTRUM SCALE INSTALLATION**

This SOW #1 includes the following subsections:

- Project Scope
- Key Assumptions
- Contractor Responsibilities
- County Responsibilities
- Estimated Schedule
- Deliverable Materials
- Completion Criteria
- Charges
- Additional Terms and Conditions

Project Scope includes the services necessary to perform the following major tasks:

- Software Infrastructure Installation and Configuration
- Spectrum Scale Implementation
- Logical Partition (LPAR) New Builds and Migrations

1. Key Assumptions

SOW #1 and Contractor's estimates to perform are based on the following key assumptions. Deviations that arise during the proposed project will be managed through the procedure described in Exhibit A, "Project Change Control Procedure".

- a) The Contractor activities described in this Statement of Work will be performed at County in Miami, FL.
- b) Some Contractor activities on this project may be performed on Contractor premises.
- c) County is solely responsible for the actual content of any data file, selection and implementation of controls on its access and use, and security of the stored data.
- d) County will identify and make the interpretation of any applicable federal, state and local laws, regulations and statutes and ensure that deliverables of the project meet those requirements.
- e) County access to Passport Advantage is required to download the installation packages for Spectrum Scale.
- f) All of the required levels of firmware necessary to support the Spectrum Scale product will be installed on the storage subsystem prior to Contractor's performance of Services.

2. Contractor Responsibilities

The specific Services to be provided under this Statement of Work are described in this section.

2.1 Contractor General Responsibilities

During Migration activities and Spectrum Scale Installation activities, the Contractor will provide Services under this Statement of Work during normal business hours, 8:00 a.m. to 5:00 p.m. (local time) Monday through Friday, except Contractor holidays. Additionally, the Contractor will provide Services twenty-four (24) hours a day, seven days a week, if required. Twenty-four hour (24) services will be prescheduled and preapproved by both the Contractor and the County.

2.2 Contractor Power9 Migration Activities

Contractor will assign a Contractor Project Manager. This person will:

- a) Oversee the execution of this project
- b) Perform Onboarding activities
- c) With the County Project Manager, develop the project plan prior to implementation for the POWER9 installation

and migration

- d) Hold weekly status meetings to discuss the progress of the project

Assign a POWER9 SME to perform the POWER9 assignments. This person will:

- a) Review and validate the current POWER landscape
- b) Perform Onboarding activities
- c) Review and validate the Physical data center readiness for the new POWER systems
- d) Review supported HMC, firmware, adapter microcode, VIOS and AIX level for the new POWER systems.
- e) Review procedures and timing for installing the new POWER systems and migrating current LPARs
- f) Review and validate the infrastructure designs for the new POWER installation
- g) Document requirements for the LPAR Migration
- h) Work with the County Project manager to coordinate the installation of cabling, and submission of any storage and network changes needed for the infrastructure implementation
- i) Install and Configure Infrastructure components:
 - up to 2 HMCs per site
 - up to 5 pairs of VIO servers per POWER9 system
 - one NIM server per POWER9 system
- j) Schedule Migration of customer LPARs and perform the Migration
- k) Validate LPAR migration to verify the technical implementation is functional (network connectivity and SAN connectivity)
- l) Fully document the new POWER configuration
- m) Perform on-site customized training of up to 10 County System Administrators

2.3 Contractor Spectrum Scale Installation Activities

Contractor will assign a Spectrum Scale SME to perform the Spectrum Scale assignments. This person will:

- a) Meet with client (remotely) to review installation/upgrade requirements
 - Review client checklist to ensure prerequisites are ready
 - Review architecture
 - Review current Spectrum Scale (GPFS) configuration
 - Discuss any open issues with existing cluster
- b) Perform Onboarding activities
- c) Review network, hardware, and connectivity
 - Validate the hardware configuration and readiness
 - Validate storage LUNs
 - Validate network settings/infrastructure in place
 - Verify multipath settings on NSD servers
 - Verify Spectrum Scale (GPFS) packages
 - Work with the Contractor POWER9 SME to make any changes to the new environment necessary for Spectrum Scale (GPFS) installation
- d) Install Spectrum Scale on systems
 - Install GPFS on required nodes

- Add the nodes to the existing GPFS cluster, working with the Miami-Dade County Spectrum Scale Administrator if necessary
- Assign the NSD(s) to the new servers and validate Client nodes
- Remove existing Power 7 nodes from the cluster
- e) Validate Spectrum Scale for functionality and performance
 - Validate file system(s) to ensure proper installation, configuration and performance based on recommended practices
 - Perform data analysis, troubleshoot if necessary.
- f) Information Transfer services and Documentation
 - The Contractor consultant will provide up to 4 hours of customized training during the installation for client system administrators covering key cluster operation, administration, operational tools and maintenance procedures. Please note that this is informal end-user training and should not be considered a substitute for formal Contractor Spectrum Scale training.
 - The Contractor consultant will provide a five (5) to seven (7) page post installation documentation detailing firmware and software versions for each installed component.

3. County Responsibilities

The successful completion of the proposed effort depends on the full commitment and participation of County management and personnel. The responsibilities listed in this section are in addition to those responsibilities specified in the Agreement and are to be provided at no charge to Contractor. Contractor's performance is predicated upon the following responsibilities being fulfilled by County as scheduled in the project plan. Delays in performance of these responsibilities may result in additional charges and/or delay of the completion of the project and will be handled in accordance with Project Change Control Procedure.

3.1 County General Responsibilities

- a) Make appropriate personnel available to assist Contractor in the performance of Contractor's responsibilities.
- b) Provide suitable office space, supplies, furniture, high speed connectivity to the Internet, and other facilities for Contractor's personnel while working on your premises.
- c) Provide security clearance and building access for Contractor project personnel. Most of the work involved in this project will be performed during normal working hours (8:00am to 5:00pm). However, on some occasions, County may need to provide access to facilities outside of these hours.
- d) Be responsible for the content of any database, the selection and implementation of controls on its access and use, backup and recovery and the security of the stored data. This security will also include any procedures necessary to safeguard the integrity and security of software and data used in the Services from access by unauthorized personnel.
- e) Be responsible for the identification and interpretation of any applicable laws, regulations, and statutes that affect your existing application systems or programs that Contractor will have access to during the Services. It is your responsibility to assure that the systems and programs meet the requirements of those laws, regulations and statutes.
- f) Authorize International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and Contractor Business Partners) to store and use your business contact information wherever they do business, in connection with Contractor products and Services or in furtherance of Contractor's business relationship with you.
- g) Prior to you making facilities, software, hardware, networks or other similar resources available to Contractor, you agree to obtain any licenses or approvals for Contractor or its subcontractors to use, access, and modify such resources to the extent necessary for Contractor to perform the Services, including the development of any Materials. Contractor will be relieved of its obligations to the extent your failure to promptly obtain such licenses or approvals adversely affects Contractor's ability to perform its obligations. If a third party asserts a claim against Contractor as a result of your failure to obtain these licenses or approvals, you agree to reimburse Contractor for any costs and damages Contractor may reasonably incur in connection with such claim.

3.2 County Project Manager

Prior to the start of this Statement of Work under the *Agreement*, County will designate a person, called the County Project Manager, to whom Contractor communications will be addressed and who has the authority to act for County in all matters regarding this SOW.

The County Project Manager's responsibilities include:

- a) Serve as the interface between Contractor and all County departments, organizations and sites participating in this project.
- b) With the Contractor Project Manager, develop the project plan prior to implementation.
- c) With the Contractor Project Manager, administer the Project Change Control Procedure.
- d) Conduct status meetings.
- e) Obtain and provide information, data, decisions and approvals, within five (5) working days of Contractor's request, unless both Contractor and County agree to an extended response time.
- f) Manage resolution of project issues and escalate issues within the County organization, as necessary.

3.3 Other Terms and Conditions

County is responsible for the backup and recovery of critical data based on the identification of the critical data backup requirements by Contractor.

4. Estimated Schedule

Estimated Start Date = To be Determined by mutual agreement of the parties

Estimated End Date = To Be Determined based on Start Date

If the Statement of Work signature date is beyond the Estimated Start Date, the Estimated Start Date shall automatically be extended to be the first business day following the day the last signature is affixed to this Statement of Work. The Estimated End Date shall automatically be extended by the same number of days.

Reasonable effort shall be made to keep the schedule dates intact.

Contractor shall not be responsible for delays or additional requirements imposed by any government agencies, labor disputes, fire, unavoidable casualties, or unforeseen conditions.

5. Deliverable Materials

The deliverable Materials, identified as Type II Materials, resulting from these Services are:

- Status Report*
- Project Workplan*
- Power 9 configuration document
- Spectrum Scale configuration document

* = Deliverable Material exempt from the Deliverable Material Acceptance Process which will be considered accepted by County upon delivery to the County Project Manager.

See Exhibit B, "Deliverables Guidelines", for a description of each deliverable Material.

See Exhibit C, "Deliverable Material Acceptance Process", for the Material acceptance process.

6. Completion Criteria

Contractor shall have fulfilled its obligations under this Statement of Work when any of the following first occurs:

- a) Contractor accomplishes the Contractor tasks described under "Contractor Responsibilities".
- b) Either of us terminates this Statement of Work in accordance with the provisions of the Agreement.
- c) The Estimated End Date is reached.

7. Charges

Charges are included in Appendix B

Unless otherwise stated herein, Charges are based upon a contiguous work schedule. Delays in the work schedule are subject to the Project Change Control Procedure and may result in an increase in charges.

SOW # 2

DISCONTINUANCE OF SERVICES (SOC-K2BPNAJ)

1. Scope of Work

This section describes the Services that IBM will provide under this Statement of Work (SOW). Specifically, IBM will provide MIAMI-DADE COUNTY (also called ‘you’ or ‘your’) with *Discontinuance Services*.

These Services will be provided for each location you designate (called "Designated Locations") as listed in the Attachments.

Solution	Sites	Offerings	Attachments
1	1	Discontinuance Services	Attachment 1-1

IBM Agrees to provide the Services described in this SOW provided you accept this SOW, without modification, by signing in the space below.

This SOW, its Schedules and the Agreement (or any equivalent agreement in effect between the parties) identified below, are the complete agreement regarding the Services, and replace all prior oral or written communications, representations, undertakings, warranties, promises, covenants, and commitments between you and IBM regarding this transaction. In entering into this SOW, neither party is relying upon any representation that is not specified in this SOW or the Agreement. Each party agrees that no modifications have been made to this SOW.

1.1 Discontinuance Services

The Discontinuance Services (called “Services”) provide you the Services needed to move your Information Technology (IT) infrastructure and/or data center. Services consist of Discontinuance planning/management services, Discontinuance hardware services and Discontinuance mover services.

The Services IBM will provide to you under this SOW are described in the following sections.

1.1.1 Discontinuance

IBM Responsibilities

IBM will provide you with the Discontinuance Services for the Machines at the Designated Location specified in Discontinuance Services attachments to this SOW.

Location: 5680 SW 87th Avenue Miami, Florida

Machines: 9119 S/N 7E5F4 and 7E604

Location: 11500 NW 25th Street, Doral, Florida

Machine: 9119 S/N BCB3T

Discontinuance Services: IBM will disassemble the County’s Machines in preparation for shipment. Such a move may include the disconnection of cables attached to the Machine(s), inter-frame cables, if present, and installation of packing materials (internal and or external) if required. IBM will identify items normally shipped with the Machine(s) and place appropriate service manuals, diagnostics, licensed internal code, and other items in shipping containers that IBM can provide, at IBM's discretion. If requested by you, IBM can perform additional activities such as the retrieval and packing of cables (including channel interface cables and other cables you specify), as well as other items you identify, for shipment. IBM will perform all such activities for an additional charge and, if necessary, use the Project Change Control Procedure to add such activities.

There is no trade in value for the existing servers as they are considered obsolete at this time.

County’s Responsibilities

The County agrees to:

- inform each of your Location(s) of the work to be done and the estimated schedule for such Location;
- provide the information and requirements necessary for IBM to perform the Services in a timely manner;
- ensure the Machines are functional and conform to their Specifications, including active IBM features prior to the start of Services;

- make back-up copies of any relevant programs and data;
- within ten business days of the Service provided, report to IBM in writing any physical loss or damage to the Machines;
- inform IBM in writing, subject to the terms of our Agreement, if you choose to terminate maintenance services for any of the Machines specified in Attachment 1-1 to this SOW;
- provide appropriate security clearances for IBM personnel; and
- advise building landlords at your Location(s) of the work to take place and obtain any necessary approvals.

The County represents that is the owner of each Machine or is authorized by its owner to allow IBM to provide the Services you have selected under this SOW.

1.1.2 Completion Criteria

IBM will have fulfilled its obligations for Discontinuance Services when the activities described above under "IBM Responsibilities" have been completed. IBM will advise you of the completion of these Services.

2. Estimated Schedule

The Services will be performed consistent with the estimated schedule mutually agreed to by both of us. We both agree to make reasonable efforts to carry out our respective responsibilities according to such schedule.

The following is provided for planning purposes:

Estimated Start Date: To Be Determined by mutual agreement of the parties

Estimated End Date: To Be Determined based on Start Date

If the SOW signature date is beyond the Estimated Start Date, the Estimated Start Date shall automatically be extended to be the first business day following the day the last signature is affixed to this SOW. The Estimated End Date shall automatically be extended by the same number of days.

3. Other IBM Responsibilities

Project Management Services provide a framework for managing project communications, reporting, and other contractual activity. IBM will designate a Project Manager who will be its focal point for all communications with you and will have the authority to act on its behalf in matters regarding this SOW. IBM's Project Manager will perform the following tasks:

- recommend changes or additions to the project as appropriate
- review and administer the Project Change Control Procedure
- review and evaluate the progress the project with your Project Manager to resolve any necessary changes
- review SOW with your Project Manager
- review the current project status

Completion Criteria: IBM will have fulfilled its obligations when IBM has accomplished its tasks described in the Scope of Services.

4. County's Other Responsibilities

County's responsibilities listed in this SOW in addition to those responsibilities specified in the Agreement and are to be provided at no charge to IBM. IBM's performance is predicated upon the following responsibilities being fulfilled by you.

Prior to the start of this SOW, you will designate, in writing, a person who will be your Project Manager. All of IBM's communications will be addressed to the Project Manager who has the authority to act for you in all aspects of the SOW. The Project Manager will perform the following activities:

- accept responsibility for the actual content of any data file and selection and implementation of controls on its access and use and security of the stored data
- administer the Project Change Control Procedure with IBM's Project Manager
- arrange adequate office space with telephone access for project personnel as required
- arrange reasonable and safe access to project site for project personnel as required

- conduct any communications through IBM's Project Manager
- help resolve project issues and escalate issues within your organization as required
- interface between IBM's Project Manager and your organizations
- obtain and provide project requirements / data / decisions and approvals within three business days

The County acknowledges that it is the County's responsibility to identify and make the interpretation of any applicable federal, state and local laws, regulations and statutes and ensure that products of the system meet those requirements.

5. Completion Criteria

IBM responsibilities under this SOW will be considered complete when either one of the following first occurs:

- a) IBM accomplishes its tasks described in this SOW, including delivery of any Deliverable Materials; or
- b) The Services are terminated in accordance with the provisions of this SOW.

6. Delays

The Estimated Schedule will be reasonably extended and the charges adjusted, if necessary, as described in the "Project Change Control Procedure" section if the project is delayed by:

- acts or omissions of you or your employees or other contractors employed by you;
- additional requirements imposed by you or any government agencies;
- labor disputes;
- fire;
- unusual delays in transportation;
- adverse weather conditions which IBM cannot reasonably anticipate;
- unavoidable casualties;
- concealed or unforeseen conditions; and
- other causes beyond our control, including Force Majeure conditions

6.1 Safety or Code Violations

IBM is not responsible for the identification or correction of any safety and/or code violations, whether federal, state or local, including but not limited to fire and electrical codes. If IBM discovers any such safety and/or code violations during the course of this SOW, IBM will notify you. IBM will not be required to proceed with the Services until you remedy such violation. IBM is not responsible for the detection or removal of asbestos, hazardous waste, or other pollutants nor is IBM responsible for any delays caused by such safety and/or code violations.

The information contained in this SOW is based on information provided to IBM by you. If conditions are found to differ from what was indicated by you, any changes necessary in this SOW will be handled via the Project Change Control Procedure.

7. Charges

Charges are included in Appendix B.

Invoicing:

The Services Charge does not include charges for configuration tapes or diskettes that may be required for the requested Services. You will be billed separately for these items if needed.

You will also be invoiced separately on an hourly (per call) basis at IBM's current hourly services rates, for the following Services if requested by you of IBM:

- over-time work authorized by you to accelerate the schedule either as to the final completion date or any interim date;
- work required by IBM to correct Machine malfunctions, unless such repairs are covered by an existing IBM agreement;
- work required by IBM to correct the results of repair or reconfiguration work done by others;
- work required by us to replace missing parts, defective parts or parts not furnished by IBM that require replacement; and

- additional time incurred by IBM caused by delays waiting for parts, equipment arrival, or access to the Designated Location(s).

Project Change Control Procedure

If a change to this SOW is required, the parties shall manage such change in accordance with the procedure as described in Exhibit A, "Project Change Control Procedure."

SOW #3

Cisco Product Procurement and Related IBM Services

This Statement of Work (SOW) defines the scope of work to be accomplished by IBM. The scope of this project is for IBM to procure Cisco products and features (Cisco Products) for Miami-Dade County and provide related services, all as specified in this SOW. The total SOW price for these products and services are included in the total pricing for this transaction. Additional services, responsibilities and Cisco Product related terms apply and are contained in Appendix A (Additional Terms and Responsibilities) within this SOW.

1. IBM Responsibilities

1.1 Procurement of Cisco Products

- a) This SOW addresses only the Miami-Dade County location at 5680 SW 87th Avenue, Miami, Florida and is for Cisco Products and Services delivered within the United States.
- b) IBM will be responsible for providing quantity two, Cisco 3560-CX 8 Port PoE IP switches.
- c) IBM will provide the Services contained in this SOW according to the following estimated schedule.
Estimated Start Date = To be Determined by mutual agreement of the parties
Estimated End Date = To be Determined based on Start Date

1.2 Services

Description of Services:

- Installation of network modules, SFP/XFP, and redundant power supply (up to four components), loading of designated IOS and application of customer-provided configuration file.
- Installation of Cisco products in customer supplied Racks at Customer Site

If the SOW signature date is beyond the Estimated Start Date, the Estimated Start Date shall automatically be the first business day following the day the last signature is affixed to this SOW. The Estimated End Date shall automatically be extended by the same number of days. Miami-Dade County and IBM agree that IBM will automatically extend the Estimated End Date as necessary in order to complete outstanding fulfillment activities.

2.0 County Responsibilities

- a) Miami-Dade County is responsible for the content of any database, the selection and implementation of controls on its access and use, backup and recovery and the security of the stored data. This security will also include any procedures necessary to safeguard the integrity and security of software and data used in the Services from access by unauthorized personnel; and be responsible for the identification of interpretation of, and compliance with, any applicable laws, regulations, and statutes that affect your existing systems, applications, programs, or data to which IBM will have access during the Services, including applicable data privacy, export, and import laws and regulations. It is your responsibility to ensure the systems, applications, programs, and data meet the requirements of those laws, regulations and statutes.
- b) Before making available any facilities, software, hardware or other resources, Miami-Dade County will obtain any licenses or approvals related to these resources that may be necessary for IBM and its subcontractors to perform the Services and develop Materials. IBM will be relieved of its obligations that are adversely affected by your failure to promptly obtain such licenses or approvals. You agree to reimburse IBM for any reasonable costs and other amounts, including costs of litigation and settlements that IBM may incur from your failure to obtain these licenses or approvals.
- c) Miami-Dade County authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use Miami-Dade County's business contact information wherever they do business, in connection with IBM products and Services or in furtherance of IBM's business relationship with Miami-Dade County.

- d) Miami-Dade County will provide security clearance and building access. Most of the work for this project will be performed during normal working hours, 8:00am to 5:00pm (local time) Monday through Friday, except IBM holidays, unless otherwise specified. However, on some occasions, Miami-Dade County may need to provide access to facilities outside of these hours.
- e) Miami-Dade County will receive and sign for the Cisco Products at their designated location. Any visible shipping damage shall be immediately reported to the shipper and the IBM Project Manager. Miami-Dade County's Project Manager will confirm receipt of the Products, in writing, to the IBM Project Manager within 48 hours of receipt of Products. If Miami-Dade County Project Manager's delivery confirmation is not received, then IBM will use the shipper's verification of delivery as the confirmation of receipt.
- f) For any non-warranty related issues regarding the return of Cisco Products provided under this SOW, Miami-Dade County will deal directly with IBM and not Cisco.
- g) Miami-Dade County will provide the following for the IBM project team while the IBM project team is working on Miami-Dade County premises:
 - Suitable office space, office supplies, furniture, telephone and other facilities equivalent to those provided to Miami-Dade County employees.
 - Clerical and reproduction services.
 - Machine time, related services, and supplies for project planning, tracking, documentation, and reporting activities.

3. Charges

Charges are included in Appendix B.

4. Project Managers and Project Change Control

- a) IBM and Miami-Dade County each will appoint a Project Manager who will coordinate activities under this SOW, and act as the primary point of contact for issue resolution and administer Project Change Control. The Project Managers will work together to establish an estimated schedule for IBM Services, Cisco Product ordering, requested delivery date, and shipment to a designated location. Both parties will make reasonable efforts to carry out their respective responsibilities according to such schedule.
- b) When both of us agree to a change in this SOW, a written description of the agreed change (called a "Change Authorization") will be prepared, which both parties must sign. The Change Authorization will describe the change, the rationale for the change, and specify any change in the scope, charges, or other terms. The terms of a mutually agreed upon Change Authorization will prevail over those of this SOW or any previous Change Authorization.

5. Other Terms and Conditions

- a) Some of the services may be performed by an IBM subcontractor. If an IBM subcontractor assists with the project, IBM is solely responsible for completion of the work described herein and compliance with the terms hereof and coordinating any involvement of IBM subcontractors who may be engaged to assist IBM in accomplishing the work described herein.
- b) All non-IBM products must be approved by IBM's Product Safety Review Board prior to IBM placing your order. If any product does not meet our product safety specifications, IBM will work with you to identify an alternate product. Procurement of an alternate product will occur only upon your approval. In the event that a satisfactory alternate product cannot be identified, this SOW may be terminated by either party without liability to the other party.
- c) IBM may discontinue accepting POAs under this SOW, upon written notice, should the IBM/Cisco relationship change. Otherwise, either of us may terminate this SOW as provided under the terms of the Agreement.
- d) Title for Machines passes from IBM upon shipment to Miami-Dade County's location or to any designated staging location.

- e) Additional IBM technical assistance is available utilizing the Project Change Control process.
- f) IBM reserves the right to terminate this Statement of Work upon written notice, if three (3) consecutive months elapse without IBM receiving a POA.
- g) IBM reserves a purchase money security interest in the Machines until IBM receives payment of the amounts due. You authorize IBM to prepare and file a financing statement to perfect its purchase money security interest in all Machines you order, and IBM delivers under this Statement of Work.

6. Completion Criteria

IBM shall have fulfilled its obligations under this Statement of Work when any of the following first occurs:

- a) IBM has provided the estimated amount of Cisco Products as specified in the Procurement of Cisco Products section.
- b) Miami-Dade County notifies IBM, in writing, that further Services are not required.
- c) Either of us terminates this Statement of Work under the terms of the Agreement.
- d) The Estimated End Date is reached.

Additional Terms and Responsibilities

1. IBM Assessment of Miami-Dade County Network Infrastructure Service
 - a) IBM will assist Miami-Dade County with basic recommendations for system design, site certification and selection of Cisco Products, for acceptance by Miami-Dade County hereunder. The task will be complete when IBM has reviewed the Miami-Dade County supplied system design documents and has provided basic recommendations. There are no deliverable Materials associated with this Service. Miami-Dade County is responsible for the validity of the network design, Product selection and the use of the Products ordered under this SOW. The IBM Services do not include Cisco Product installation or system design unless specified herein.
2. IBM Warranty Service for Cisco Products
 - a) IBM will be responsible for performing all applicable warranty service as specified in Cisco's standard warranty for the Cisco Products purchased hereunder, subject to the warranty period and terms and conditions set forth therein. The warranty period will commence upon shipment to Miami-Dade County's location, or to any designated staging location, or upon such period as is provided for in the Cisco warranty shipped with the original Cisco Product. Warranty information for the Cisco Products is available at: http://www.cisco.com/en/US/products/prod_warranties_listing.html
 - b) Depending upon the terms of Cisco's published warranty, IBM will:
 - 1) Receive the initial service request from Miami-Dade County and verify warranty entitlement.
 - 2) Assist Miami-Dade County in obtaining a Cisco Return Material Authorization (RMA) number for failed Products or components.
 - c) IBM will:
 - 1) Return all failed parts or Cisco Products to the Cisco designated location. For a part or Cisco Product that has been replaced pursuant to the product warranty terms, Miami-Dade County shall return failed/defective part or Cisco Product to Cisco within fifteen (15) calendar days of the receipt of the replaced part or Cisco Product utilizing Cisco's RMA process. If that part or Cisco Product is not shipped to the designated Cisco location within fifteen (15) calendar days, IBM will invoice the current list price of the part or Cisco Product to Miami-Dade County and Miami-Dade County agrees to pay such invoice.
 - 2) Ensure all parts and Cisco Products are properly packaged prior to being shipped, and include a written description of the failure and specification of any changes or alterations made to the part or Cisco Product. Parts and Cisco Products returned to Cisco must conform in quantity and serial number to the RMA request.
 - 3) Tag each package returned to Cisco with the RMA transaction number and a brief description of the problem.
 - 4) Supply RMA information and proof of compliance to the IBM Project Manager upon request.
3. Pricing is based upon IBM procuring the Cisco Products directly from Cisco. On a limited exception basis, if the direct availability of a Cisco Product from Cisco does not meet Miami-Dade County's needs, Miami-Dade County may request

- IBM to procure the Cisco Products from one of IBM's authorized alternate suppliers. IBM will advise Miami-Dade County of the modified pricing prior to placing the order.
4. Cisco Product pricing includes IBM's provision of the "IBM Assessment of Miami-Dade County Network Infrastructure Service" and IBM Warranty for Cisco Products Services.
 5. Miami-Dade County agrees to maintain and provide to IBM in a timely fashion, accurate inventory records for Cisco products purchased from IBM under this Statement of Work. Inventory records include the physical address where each Cisco Product is installed and the device type and serial number. Upon receipt, IBM will make the necessary changes in the parts logistics database on your behalf. Without accurate inventory records, your entitlement for parts may be denied or delayed.
 6. Pricing is only valid if Miami-Dade County purchases Cisco SMARTnet maintenance at the time of purchase for each Machine ordered.
 7. If Miami-Dade County cancels all or part of a Cisco order less than fifteen (15) days prior to the scheduled delivery date, Miami-Dade County agrees to pay any cancellation penalty imposed by Cisco. Such cancellation penalty is estimated to be 10% of the purchase price of the canceled order.

SOW #4
Technical Training for IBM AIX and Spectrum Scale Products

Statement of Work

The IBM Client Relationship Agreement, ("Agreement") and this Statement of Work ("SOW"), which incorporates the Exhibits listed below, and any applicable attachments, will govern the Services as specified in this SOW. The Agreement and this SOW (and any applicable attachments) represent the complete agreement regarding this subject matter and replace any prior oral or written communications between our two organizations. Any alternations to this SOW including schedule changes will be processed in accordance with the procedure as described in Exhibit A, "Project Change Control Procedure." This SOW is not a work authorization. A Miami-Dade County Purchase Order is the only valid work authorization and will serve as authorization to proceed with the work specified in this SOW.

The Statement of Work includes the following subsections:

- Project Scope;
- Key Assumptions;
- IBM Responsibilities;
- Miami-Dade County Responsibilities;
- Estimated Schedule;
- Deliverable Materials;
- Completion Criteria;
- Charges;
- Other Terms and Conditions.

Changes to this Statement of Work will be processed in accordance with the procedure described in Exhibit A, "Project Change Control Procedure." The investigation and the implementation of changes may result in modifications to the Estimated Schedule, Charges, or other terms of this Statement of Work.

The following are incorporated in and made part of this Statement of Work:

- Exhibit A, "Project Change Control Procedure"

2.0 Project Scope

- IBM will deliver Technical Training for IBM AIX and Spectrum Scale products.

2.1 Key Assumptions

This Statement of Work and IBM's estimate to perform the Services identified herein are based on the following key assumptions. Deviations that arise during the proposed project will be managed through the procedure described in Exhibit A, "Project Change Control Procedure."

1. The IBM activities described in this Statement of Work will be performed at Miami, Florida.
2. An IBM subcontractor may perform some of the Services. If an IBM subcontractor assists with the project, IBM is solely responsible for completion of the work described herein and compliance with the terms hereof and coordinating any involvement and compliance of IBM subcontractors who may be engaged to assist IBM in accomplishing the work described herein.
3. IBM will provide Services under this Statement of Work during normal business hours, 8:00 a.m. to 5:00 p.m. (local time) Monday through Friday, except IBM holidays, unless otherwise specified.
4. IBM staffs projects on a national basis with either local or non-local resources based upon resource availability at project initiation. At the start of a project and on an ongoing basis, our project managers shall work together to mutually

determine any onsite requirements of non-local perform resources. For long term engagements, the typical 40-hour work week of full time non-local resources normally consists of the resource traveling to your site on Monday, returning to their home city at the end of the workday on Thursday and performing project related activities remotely on Friday, as applicable. During weeks with a national Holiday or during periods when a resource is not required to be onsite full time, both parties will work together to define an alternate full-time work schedule. Such alternate work schedule may include the resource performing project related activities remotely.

5. Some IBM activities on this project may be performed on IBM premises.
6. Client agrees that it shall not allow IBM access to any personal or other regulated information unless IBM has otherwise first agreed in writing to implement additional security and other measures to protect such information.

2.2 IBM Responsibilities

The specific Services to be provided by IBM under this Statement of Work are described in this section.

IBM will:

Perform delivery management for all five (5) of the courses as listed below:

- AIX Advanced Administration
- PowerVM Advanced Administration
- Performance Management
- PowerHA/SystemMirror Implementation
- Spectrum Scale Administration

2.3 Miami-Dade County Responsibilities

The successful completion of the proposed effort depends on the full commitment and participation of the County management and personnel. The responsibilities listed in this section are in addition to those responsibilities specified in the Agreement and are to be provided at no charge to IBM. IBM's performance is predicated upon the following responsibilities being fulfilled by the County as scheduled in the project plan. Delays in performance of these responsibilities may result in additional charges and/or delay of the completion of the project and will be handled in accordance with Project Change Control Procedure.

1. Make appropriate personnel available to assist IBM in the performance of IBM's responsibilities.
2. Provide suitable office space, supplies, furniture, and high-speed connectivity to the Internet and other facilities for IBM's personnel while working on your premises.
3. Provide security clearance and building access for IBM project personnel. Most of the work involved in this project will be performed during normal working hours (8:00am to 5:00pm). However, on some occasions, Miami-Dade County may need to provide access to facilities outside of these hours.
4. Be responsible for the content of any database, the selection and implementation of controls on its access and use, backup and recovery and the security of the stored data. This security will also include any procedures necessary to safeguard the integrity and security of software and data used in the Services from access by unauthorized personnel.
5. Be responsible for the identification and interpretation of any applicable laws, regulations, standards, and statutes that affect your existing application systems or programs that IBM will have access to during the Services. It is your responsibility to assure that the systems and programs meet the requirements of those laws, regulations, standards, and statutes.

2.3.1 Miami-Dade County Project Manager

Prior to the start of this Statement of Work under the *Agreement*, Miami-Dade County will designate a person, called the County Project Manager ("Miami-Dade County Project Manager" or "County Project Manager"), to whom IBM communications will be addressed and who has the authority to act for Miami-Dade County in all matters regarding this SOW.

The Miami-Dade County Project Manager's responsibilities include:

1. Serve as the interface between IBM and all Miami-Dade County departments, organizations and sites participating in this project.
2. With the IBM Project Manager, develop the project plan prior to implementation.
3. With the IBM Project manager, administer the Project Change control Procedure.

4. Conduct status meetings.
5. Manage resolution of project issues and escalate issues within the Miami-Dade County organization, as necessary.
6. Obtain and provide information, data, decisions and approvals within five (5) working days of IBM's request, unless both IBM and Miami-Dade County agree to an extended response time.

2.3.2 Other Terms and Conditions

1. The County will provide any hardware or software required to maintain the infrastructure.
2. Creation and customization of reports will be performed by the County personnel.
3. The County's technical personnel will be responsible for operating system (e.g. AIX, Windows) level activities, such operating system upgrades, deploying patches, monitoring and maintaining system performance, maintaining operating system security and rebooting when necessary.
4. The County is responsible for the backup and recovery of critical data based on the identification of the critical data backup requirements identified by IBM.

Estimated Schedule

Estimated Start Date = To Be Determined based on mutual agreement of the parties

Estimated End Date = To be Determined based on Start Date

If the Statement of Work signature date is beyond the Estimated State Date, the Estimated Start Date shall automatically be extended to be the first business day following the day the last signature is affixed to this Statement of Work. The Estimated End Date shall automatically be extended by the same number of days.

Reasonable effort shall be made to keep the schedule dates intact.

IBM shall not be responsible for delays or additional requirements imposed by any government agencies, labor disputes, fire, unavoidable casualties, or unforeseen conditions, including Force Majeure conditions.

2.4 Deliverable Materials

Student Course Materials

Student Course Materials include those Materials, created during the Service performance period or otherwise (such as those that pre-exist the Service), in which IBM or third parties have all right, title, and interest (including ownership of copyright). IBM will deliver one electronic copy (PDF) of the specified Materials to the student attending the class. IBM grants you an irrevocable, nonexclusive, worldwide, paid-up license for the student to use and display the course materials. Student Course Materials may not be further copied or distributed.

2.5 Completion Criteria

IBM will have fulfilled its obligations under this SOW when any one of the following first occurs:

- IBM accomplishes the IBM activities described in Section 2.3 IBM Responsibilities, including delivery to you of the Materials described in Section 2.5 Materials, if any,
- You or IBM terminates the project in accordance with the provisions of the Agreement.

2.5 Charges

Charges are included in Appendix B.

IBM will invoice you upon completion of actual Services courses delivered and other reasonable expenses incurred in connection with the Services, and applicable taxes, if any. Payment is due in accordance with the terms of this Agreement. Miami-Dade County agrees to pay by electronic funds transfer or other means acceptable to IBM to an account specified by IBM. In the event of late payment, IBM reserves the right to suspend the provision of Services until payment is received.

2.6 Additional Terms and Conditions

Termination

Either party may cancel a Service. All cancellation requests must be received in writing. If you cancel or reschedule an instructor-led class or education consulting engagement within seven (7) calendar days prior to the scheduled start date you will be billed the full price; if you cancel or reschedule between eight (8) and fifteen (15) calendar days prior to the scheduled start date you will be billed 25% of the full price; and if you cancel or reschedule between sixteen (16) and twenty-one (21) calendar days prior to the scheduled start date you will be billed 10% of the full price. Cancelling or rescheduling more than twenty-one calendar days prior to the scheduled start date may be made without charge.

Required Consents

The County is responsible for promptly obtaining and providing to IBM all Required Consents necessary for IBM to provide the Services described in this Agreement. A Required Consent means any consents or approvals required to give IBM and its subcontractors the right or license to access, use and/or modify (including creating derivative works) the hardware, software, firmware and other products, to enable IBM and its subcontractors to perform the Services set forth in this Agreement without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products. For this engagement, the County releases IBM, its subsidiaries, affiliates and subcontractors, from any and all liability for all claims, losses, liabilities and damages (including reasonable attorneys' fees and costs) arising from or in connection with any claims (whether stated in contract or tort, including but not limited to all claims for patent and copyright infringement) made against them, arising from or alleged to have occurred as a result of the County's failure to provide any Required Consents. IBM will be relieved of the performance of any obligations that may be affected by the County's failure to promptly provide any Required Consents to IBM.

SOW #5
ILMT Deployment Services

Statement of Work

This Statement of Work includes the following subsections:

- Project Scope;
- Key Assumptions;
- IBM Responsibilities;
- Miami-Dade County Responsibilities;
- Estimated Schedule;
- Deliverable Materials;
- Completion Criteria;
- Charges;
- Other Terms and Conditions.

Changes to this Statement of Work will be processed in accordance with the procedure described in Exhibit A, "Project Change Control Procedure." The investigation and the implementation of changes may result in modifications to the Estimated Schedule, Charges, or other terms of this Statement of Work.

The following are incorporated in and made part of this Statement of Work:

- Exhibit A, "Project Change Control Procedure"
- Exhibit B-1: "Deliverable Materials"

2. Project Scope

In this project IBM will provide IBM License Metric Tool (ILMT) Services to Install ILMT on a Microsoft Windows Server with SQL Server or MySQL Database environment. IBM will provide server sizing and capacity planning documents to Miami Dade County for provisioning of a Windows virtual machine. IBM will advise on placement of the SQL Database (should it reside on the same ILMT Server or a separate SQL Server environment in a consolidated environment or an independent server)

2.1 Key Assumptions

This Statement of Work and IBM's estimate to perform the Services identified herein are based on the following key assumptions. Deviations that arise during the proposed project will be managed through the procedure described in Exhibit A, "Project Change Control Procedure."

1. The IBM activities described in this Statement of Work will be performed for the location in Miami, FL.
2. An IBM subcontractor may perform some of the Services. If an IBM subcontractor assists with the project, IBM is solely responsible for completion of the work described herein and compliance with the terms hereof and coordinating any involvement and compliance of IBM subcontractors who may be engaged to assist IBM in accomplishing the work described herein.
3. IBM will provide Services under this Statement of Work during normal business hours, 8:00 a.m. to 5:00 p.m. (local time) Monday through Friday, except IBM holidays, unless otherwise specified.
4. IBM staffs projects on a national basis with either local or non-local resources based upon resource availability at project initiation. At the start of a project and on an ongoing basis, our project managers shall work together to mutually determine any onsite requirements of non-local perform resources. For long term engagements, the typical 40-hour work week of full time non-local resources normally consists of the resource traveling to your site on Monday, returning to their home city at the end of the workday on Thursday and performing project related

activities remotely on Friday, as applicable. During weeks with a national Holiday or during periods when a resource is not required to be onsite full time, both parties will work together to define an alternate full-time work schedule. Such alternate work schedule may include the resource performing project related activities remotely.

5. Some IBM activities on this project may be performed on IBM premises.
6. IBM professional services will provide transfer of information to the technical personnel assigned to work with IBM professional services during this project.
7. The customer environment is estimated to be comprised of approximately 15 servers endpoints spread across 1 location(s).
8. The operating systems in scope for agent deployment are supported versions of Microsoft Windows and RedHat Enterprise Linux (RHEL), Solaris and AIX.
9. A new environment will be provisioned for the BigFix or IBM License Metric Tool (ILMT) for the purposes of this project utilizing Windows/ SQLServer or MySQL
10. The ILMT region for this project is Region 1. Regions are used for reporting purposes and do not reflect the deployment location of this SOW. IBM defines regions as follows:
 - Region 1: North America & South America
 - Region 2: Europe & Africa
 - Region 3: Asia & Australia
11. There are no iSeries servers in scope.
12. The services engineer delivering your ILMT project is an expert at ILMT. Questions regarding your compliance with your specific IBM licensing terms and contracts should be directed to your IBM Software Client Leader or other IBM executives that are familiar with your IBM software license contracts.
13. ILMT audit reports may be generated as part of the deliverables in this ILMT engagement. Your ILMT services engineer will provide non-binding advice to assist you in reviewing and validating these ILMT reports. Official decisions must come from your IBM Software executive or liaison.
14. You are responsible for final delivery of reports to IBM.
15. IBM will deploy a subset of endpoints to pilot the agent and relay solution as part of the planning and testing process. You will complete the upgrade of relays and agents in production.

2.2 IBM Responsibilities

The specific Services to be provided by IBM under this Statement of Work are described in this section.

Activity 1 – ILMT Deployment

In this activity, IBM will perform Services to deploy the BigFix server architecture and ILMT into your production environment. IBM understands that, for ILMT endpoints, Miami Dade County has approximately 55 servers in a single location. IBM also understands Miami Dade County owns additional solutions for BigFix and the scope for those endpoints which may use those additional solutions is potentially different. IBM will work with you to establish what a future managed endpoint count may look like and help you size your server accordingly. The tasks for this SOW includes the following tasks:

- a. Assist with validation of installation pre-requisites to install BigFix/ILMT
- b. Install the ILMT 9 components including the BigFix server
- c. Assist with Catalog and PVU table imports
- d. Assist with set up of users and roles
- e. Assist with importing of part numbers from Passport Advantage
- f. Assist with generation of test PVU and RVU audit reports
- g. If specified by the IBM consultant, assist you to deploy relays
- h. Deploy up to 15 endpoints to validate the agent deployment plan
- i. Provide transfer of information sessions to:
 - i. Demonstrate usage of ILMT for up to ten (10) personnel on the ILMT user interface and various reporting features

- ii. Provide training to technical staff on installation, configuration, maintenance and server to client communication troubleshooting.
- iii. Provide asset management staff training on;
- iv. Reporting and bundling
- v. How to manage software instance installations that can be excluded from the PVU calculations.
- vi. How to manage bundled or complex software products, how to manage the IBM supplied PVU and software catalog updates.
- j. Bundling Assistance
 - i. Provide assistance on bundling of ten (10) products, assignment of components to products for accurate reporting and how to manage bundled or complex software products
- k. IBM will not provide report generation or validation as part of this activity
- l. IBM will not provide official report validation for license compliance as part of this activity
- m. IBM is assisting you to stand up a test or pre-production environment. Promotion to production and deployment of agents into production is your responsibility

Deliverable Materials:

Deployment Summary

Activity 2 – ILMT Ongoing Assistance

In this activity, IBM will provide access to an ILMT expert using hours remaining on the SOW until the end date of this SOW. Examples of tasks the ILMT expert may assist with are listed below:

- a. Provide enablement on use of ILMT
- a. Provide guidance on generating the audit snapshot
- b. Provide guidance on reconciling entitlements with your audit report
- c. Provide assistance with deploying agents
- d. Provide assistance with troubleshooting
- e. Provide a health check of your ILMT environment
- f. You are responsible for requesting assistance

Activity 3 – Engagement Management

IBM will designate a person to perform as the IBM Engagement Manager. The IBM Engagement Manager will work with Your project team and the IBM project team throughout the deployment and is responsible for:

- a. Facilitating
 - (1) Setup and kick off initiation and status calls as needed
 - (2) Setup and kick off project planning calls as needed
- b. Monitoring
 - (1) Report on project status through individual deployment journal(s) provided by the engineers
- c. Handling exceptions
 - (1) Manage reported issues to closure. Confirm that appropriate corrective actions are taken to resolve documented issues
 - (2) Manage non-compliance incidents to closure. Confirm that appropriate actions are taken to prevent a recurrence of incidents that impacted the project
 - (3) Handle changes when and as they occur, by regulating the flow of requested changes. Document the impact of requested changes
 - (4) Facilitate resolution of defects to confirm that they are repaired and brought into compliance with requirements or specifications

2.3 County Responsibilities

The successful completion of the proposed effort depends on the full commitment and participation of the County management and personnel. The responsibilities listed in this section are in addition to those responsibilities specified in the Agreement and are to be provided at no charge to IBM. IBM's performance is predicated upon the following responsibilities being fulfilled by the County as scheduled in the project plan. Delays in performance of these responsibilities may result in additional charges and/or delay of the completion of the project and will be handled in accordance with Project Change Control Procedure.

- Make appropriate personnel available to assist IBM in the performance of IBM's responsibilities.
- Provide suitable office space, supplies, furniture, and high-speed connectivity to the Internet and other facilities for IBM's personnel while working on your premises.
- Provide security clearance and building access for IBM project personnel. Most of the work involved in this project will be performed during normal working hours (8:00am to 5:00pm). However, on some occasions, Miami-Dade County may need to provide access to facilities outside of these hours.
- Be responsible for the content of any database, the selection and implementation of controls on its access and use, backup and recovery and the security of the stored data. This security will also include any procedures necessary to safeguard the integrity and security of software and data used in the Services from access by unauthorized personnel.
- Be responsible for the identification and interpretation of any applicable laws, regulations, standards, and statutes that affect your existing application systems or programs that IBM will have access to during the Services. It is your responsibility to assure that the systems and programs meet the requirements of those laws, regulations, standards, and statutes.

2.3.1 Miami-Dade County Project Manager

Prior to the start of this Statement of Work under the *Agreement*, Miami-Dade County will designate a person, called the County Project Manager ("Miami-Dade County Project Manager" or "County Project Manager"), to whom IBM communications will be addressed and who has the authority to act for Miami-Dade County in all matters regarding this SOW.

The Miami-Dade County Project Manager's responsibilities include:

1. Serve as the interface between IBM and all Miami-Dade County departments, organizations and sites participating in this project.
2. With the IBM Project Manager, develop the project plan prior to implementation.
3. With the IBM Project manager, administer the Project Change control Procedure.
4. Conduct status meetings.
5. Manage resolution of project issues and escalate issues within the Miami-Dade County organization, as necessary.
6. Obtain and provide information, data, decisions and approvals within five (5) working days of IBM's request, unless both IBM and Miami-Dade County agree to an extended response time.

2.3.2 Other Terms and Conditions

1. The County will provide any hardware or software required to maintain the infrastructure.
2. Creation and customization of reports will be performed by the County personnel.
3. The County's technical personnel will be responsible for operating system (e.g. AIX, Windows) level activities, such operating system upgrades, deploying patches, monitoring and maintaining system performance, maintaining operating system security and rebooting when necessary.
4. The County is responsible for the backup and recovery of critical data based on the identification of the critical data backup requirements identified by IBM.

2.3.3 Estimated Schedule

Estimated Start Date = To be Determined by mutual agreement of the parties

Estimated End Date = To be Determined based on Start Date

If the Statement of Work signature date is beyond the Estimated State Date, the Estimated Start Date shall automatically be extended to be the first business day following the day the last signature is affixed to this Statement of Work. The Estimated End Date shall automatically be extended by the same number of days. Reasonable effort shall be made to keep the schedule dates intact.

IBM shall not be responsible for delays or additional requirements imposed by any government agencies, labor disputes, fire, unavoidable casualties, or unforeseen conditions including Force Majeure conditions.

2.4 Deliverable Materials

IBM will provide you with the tangible items listed in Exhibit B-1 which will be provided as Project Materials.

2.5 Completion Criteria

IBM will have fulfilled its obligations under this SOW when any one of the following first occurs:

- IBM accomplishes the IBM activities described in Section 2.3 IBM Responsibilities, including delivery to you of the Materials described in Section 2.5 Materials, if any,
- IBM provides the number of estimated hours of Services specified in Section 2.7 Charges or in any subsequent Change Authorization,
- You or IBM terminates the project in accordance with the provisions of the Agreement.

2.6 Charges

Charges are included in Appendix B

2.7 Additional Terms and Conditions

Termination

Either party may terminate this Statement of Work in accordance with the Agreement.

Required Consents

The County is responsible for promptly obtaining and providing to IBM all Required Consents necessary for IBM to provide the Services described in this Agreement. A Required Consent means any consents or approvals required to give IBM and its subcontractors the right or license to access, use and/or modify (including creating derivative works) the hardware, software, firmware and other products, to enable IBM and its subcontractors to perform the Services set forth in this Agreement without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products. For this engagement, the County releases IBM, its subsidiaries, affiliates and subcontractors, from any and all liability for all claims, losses, liabilities and damages (including reasonable attorneys' fees and costs) arising from or in connection with any claims (whether stated in contract or tort, including but not limited to all claims for patent and copyright infringement) made against them, arising from or alleged to have occurred as a result of the County's failure to provide any Required Consents. IBM will be relieved of the performance of any obligations that may be affected by the County's failure to promptly provide any Required Consents to IBM.

SOW #6
Hourly Services

1. Hourly Services

We will provide Hourly Services, under this Statement of Work ("SOW"), as described below in the Scope of Services, to assist you with your project. You are responsible for project management and for any results achieved. The hours authorized by you and specified below do not imply or commit a fixed-price contract. If IBM determines that it is necessary to exceed the estimated hours or the Estimated End Date, we will inform you as soon as practical of the additional hours required and the revised Estimated End Date, if applicable. In such event, you may authorize additional hours or extend the Estimated End Date in writing. If you alternatively choose to terminate IBM Services, you agree to pay IBM for the actual hours worked and any actual travel and living expenses (incurred by IBM) through the termination of the Services, and you agree to relieve us of our responsibility to complete any incomplete Materials.

2. Charges

Unless otherwise stated herein, Charges are based upon a contiguous work schedule. Delays in the work schedule are subject to the Project Change Control Procedure and may result in an increase in charges.

IBM will provide 8 HOURS of Customer Engineer time for installation of customer set up devices

Prior to you making facilities, software, hardware, networks or other similar resources available to IBM, you agree to obtain any licenses or approvals related to these resources that may be necessary for IBM and its subcontractors to use, access, and modify such resources to the extent necessary for IBM to perform the Services and develop Materials. IBM will be relieved of its obligations that are adversely affected by your failure to promptly obtain such licenses or approvals. You agree to reimburse IBM for any reasonable costs and other amounts, including costs of litigation and settlements that IBM may incur from your failure to obtain these licenses and approvals.

3. Other Terms

You will obtain any necessary consents and take any other actions required by applicable laws, including but not limited to data privacy laws, prior to disclosing any your employee information or other personal information or data to IBM. You also agree that with respect to data that is transferred or hosted outside of the United States, You are responsible for ensuring that all such data transmitted outside of the United States adheres to the laws and regulations governing such data.

You understand and agree that IBM is permitted to use global resources (non-permanent residents used locally and personnel in locations worldwide) for the delivery of Services.

Each party will each comply with applicable export and import laws and associated embargo and economic sanction regulations, including those of the United States, that prohibit or restrict the export, re-export, or transfer of Products, technology, Services or data, directly or indirectly, to or for certain countries, end uses or end users.

IBM is not responsible for the identification or correction of any safety and/or code violations, whether federal, state or local, including but not limited to fire and electrical codes. If IBM discovers any such safety and/or code violations during the course of this SOW, IBM will notify you. IBM will not be required to proceed with the Services until you remedy such violation. IBM is not responsible for the detection or removal of asbestos, hazardous waste, or other pollutants nor is IBM responsible for any delays caused by such safety and/or code violations.

The information contained in this SOW is based on information provided to IBM by you. If conditions are found to differ from what was indicated by you, any changes necessary in this SOW will be handled via the Project Change Control Procedure.

4. Project Change Control Procedure

Changes in this SOW will be managed in accordance with Exhibit A, Project Change Control Procedure.

5. Deliverable Materials

All Materials delivered under this SOW shall be Type II Materials, unless the parties otherwise agree in writing, and will be considered accepted upon delivery to Miami Dade County.

The following Materials will be delivered to Miami Dade County under this SOW:

- Type II Materials = None

6. Completion Criteria

Services will end when 1) you advise us, in writing, that further Services are not required, or 2) we provide the specified number of hours of Services, or 3) the Estimated End Date is reached.

If the SOW signature date is beyond the Estimated Start Date, the Estimated Start Date shall automatically be extended to be the first business day following the day the last signature is affixed to this SOW. The Estimated End Date shall automatically be extended by the same number of days.

IBM shall not be responsible for delays or additional requirements imposed by any government agencies, labor disputes, fire, unavoidable casualties, or unforeseen conditions including Force Majeure conditions.

7. Scope of Services

IBM will provide 8 hours of Customer Engineer time for installation of customer set up devices.

In entering into this SOW, you are not relying upon any representation made by or on behalf of IBM that is not specified in the Agreement or this SOW, including, without limitation, the actual or estimated completion date, number of hours to provide any of the Services, charges to be paid, or the results of any of the Services to be provided under this SOW.

Exhibit A**Project Change Control Procedure**

When both of us agree to a change in this Statement of Work, a written description of the agreed change (called a "Change Authorization") will be prepared, which both parties must sign. The Change Authorization will describe the change, the rationale for the change, and specify any change in the charges, estimated schedule, or other terms. Depending on the extent and complexity of the requested changes, IBM may charge for the effort required to analyze it. When charges are necessary in order to analyze a change, IBM will provide a written estimate and begin the analysis on written authorization. The terms of a mutually agreed upon Change Authorization will prevail over those of this Statement of Work or any previous Change Authorization.

Exhibit B

Deliverable Materials Guidelines

Status Report

Purpose: IBM will provide a Status Report during the project to describe the activities which took place during that period. Significant accomplishments, milestones, and problems will be described.

Delivery: One copy in electronic format will be delivered to the County Project Manager within five working days following the reporting period.

Content: The report will consist of the following, as appropriate:

- Activities performed during the reporting period
- Activities planned for the next reporting period
- Project change control activity
- Problems, concerns, and recommendations

Power 9 Configuration Document

Purpose: IBM will provide a Power 9 Configuration document that will include the new technical configuration of the Power 9 environment.

Delivery: One copy in electronic format will be delivered to the County Project Manager.

Content: The report will consist of the following, as appropriate:

- Configuration overview
- Power 9 Configuration details

Spectrum Scale Configuration Document

Purpose: IBM will provide a Spectrum Scale Configuration document that will include the new technical configuration of the Spectrum Scale environment.

Delivery: One copy in electronic format will be delivered to the County Project Manager.

Content: The report will consist of the following, as appropriate:

- Configuration overview
- Spectrum Scale Configuration details

Exhibit B-1: Deliverable Materials**B – 1 Deployment Summary**

Purpose: The purpose of this document is to provide a summary of deployment activities.

Content: Typically consists of items similar to:

- Installation steps/procedures/instructions/parameters, and best practice considerations
- Configurations steps/procedures/instructions/parameters, best practice considerations
- Customization steps/procedures/instructions
- Scripts used during the engagement
- Issues encountered and their resolution status.

Delivery: IBM will deliver one (1) copy of this document in softcopy format.

Exhibit C**Deliverable Material Acceptance Process**

Each Deliverable Material as defined in Exhibit B - Deliverable Materials Guidelines will be reviewed and accepted in accordance with the following procedure:

- One (1) printed draft of the Deliverable Material will be submitted to the County Project Manager. It is the County Project Manager's responsibility to make and distribute additional copies to any other reviewers.
- Within five (5) business days of receipt, the County Project Manager will either accept the Deliverable Material or provide the IBM Project Manager a written list of requested revisions, unless IBM & Miami-Dade County agree to an extended response time. If IBM receives no response from the County Project Manager within five (5) business days, then the Deliverable Material will be deemed accepted.
- The IBM Project Manager will consider County's request for revisions, if any, within the context of IBM's obligations as stated in Exhibit B - Deliverable Materials Guidelines.
- Those County revisions agreed to by IBM will be made and the Deliverable Material will be resubmitted to the County Project Manager, at which time the Deliverable Material will be deemed accepted.
- Those County revisions not agreed to by IBM will be managed in accordance with Exhibit A, Project Change Control Procedure. If needed, Exhibit D -- Escalation Procedure will be invoked.

Exhibit D**Escalation Procedure**

The following procedure will be followed if resolution is required to a conflict arising during the performance of the Services.

When a conflict arises between the County Project Manager and IBM, the project team member(s) will first strive to work out the problem internally.

- Level 1: If the project team cannot resolve the conflict within two (2) working days, the County Project Manager and the IBM Project Manager will meet to resolve the issue.
- Level 2: If the conflict is not resolved within three (3) working days after being escalated to Level 1, the County's Chief Financial Officer or designee will meet with the IBM project executive to resolve the issue.
- If the conflict is resolved by either Level 1 or Level 2 intervention, the resolution will be addressed in accordance with the Project Change Control Procedure.
- If the conflict remains unresolved after Level 2 intervention, then either party may terminate the applicable Service. If the conflict is addressed by termination, you agree to pay IBM for a) all Services IBM provides and any products and Materials IBM delivers through termination, b) all expenses IBM incurs through termination, and c) any charges IBM incurs in terminating the Services.

During any conflict resolution, IBM agrees to provide Services relating to items not in dispute, to the extent practical pending resolution of the conflict. You agree to pay invoices per this SOW.

Attachment 1

- IBM Client Relationship Agreement
- IBM Delegation of Authority



Client Relationship Agreement

Using this agreement, Client may order Programs, Cloud and other Services, Machines and Appliances (collectively IBM Products) and third party products and services (Non-IBM Products) available from IBM. Details regarding products, offerings or orders are provided in Attachments and Transaction Documents (TDs). This Client Relationship Agreement and applicable Attachments and TDs are the complete agreement (Agreement) regarding transactions under this Agreement.

Programs

A **Program** is an IBM-branded computer program and related material available for license from IBM subject to the payment of charges. Program details are described in an Attachment called License Information (LI) available at <http://www-03.ibm.com/software/sla/slabdb.nsf>. Programs do not include Machine Code or Project Materials. Programs are copyrighted and licensed (not sold). When IBM accepts an order for a Program, IBM grants Client a nonexclusive license to: a) use the Program only up to its authorizations and subject to its LI; b) make and install copies to support such authorized use; and c) make a backup copy. Programs may be used by Client, its authorized employees and contractors only within Client's Enterprise, and not to provide hosting or timesharing services to any third party. Client may not sublicense, assign, or transfer the license for any Program. Additional rights may be available from IBM for additional fees or under different terms. IBM does not grant unrestricted rights to use the Program nor has Client paid for all of the economic value of the Program. Certain Programs may contain third party code licensed under separate agreements identified in the LI.

The license granted for a Program is subject to Client:

- a. reproducing copyright notices and other markings;
- b. ensuring anyone who uses the Program does so only for Client's authorized use and complies with the license;
- c. not reverse assembling, reverse compiling, translating, or reverse engineering the Program; and
- d. not using any of the elements of the Program or related licensed material separately from the Program.

The metric applicable to a Program license is specified in an Attachment or TD. All licenses on a server or capacity based metric must be licensed to the full capacity of the server on which the Program is installed, unless sub-capacity usage is available from IBM and Client complies with the applicable sub-capacity requirements.

Services - Cloud Services

A **Cloud Service** is an IBM branded offering hosted or managed by IBM and made available via a network. Each

Cloud Service is described in a TD or an Attachment called a Service Description. When IBM accepts Client's order, IBM provides Client the entitlements specified in the TD. Cloud Services are designed to be available 24/7, subject to maintenance. Client will be notified of scheduled maintenance. Service level commitments, if applicable, are specified in an Attachment or TD.

Client may access and use a Cloud Service only to the extent of authorizations acquired by Client. Client is responsible for use of Cloud Services by any party who accesses the Cloud Service with Client's account credentials. A Cloud Service may not be used for unlawful, obscene, offensive or fraudulent content or activity, in any jurisdiction for any user, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, viruses or harmful code, or violating third party rights. If there is a complaint or notice of violation, use may be suspended until resolved, and terminated if not resolved promptly. Unless expressly provided in a TD, Client is not authorized to use a Cloud Service to provide hosting or timesharing services to any third party.

Each Cloud Service is designed to protect the proprietary content that Client inputs into the Cloud Service and to provide for access and use only as part of the Cloud Service. Except as otherwise specified in a TD, IBM will only provide access and use of Client's proprietary content to IBM employees and contractors as needed to deliver the Cloud Service. IBM will not disclose Client's proprietary content and will return or destroy it upon the expiration or cancellation of the Cloud Service, or earlier upon Client's request. IBM may charge for certain activities performed at Client's request (such as delivering content in a specific format).

The description for each Cloud Service includes the security functions and features applicable to the Cloud Service. IBM will provide Client notice of any unauthorized third party access to Client's content of which IBM becomes aware and will use reasonable efforts to remediate identified security vulnerabilities. If Client's content is lost or damaged, IBM will assist Client in restoring it to the Cloud Service from Client's last available backup copy in compatible format.

The term, including any renewal term, for a Cloud Service is described in an Attachment or TD. IBM may withdraw a Cloud Service on 12 months' notice, unless otherwise stated in an Attachment or TD. IBM will either continue to provide the Cloud Service for the remainder of Client's unexpired term or work with Client to migrate to another IBM Service. IBM may suspend, revoke or limit Client's use

of a Cloud Service if IBM determines there is a material breach of Client's obligations, a security breach, or violation of law. Charges will continue to accrue for the Cloud Service during any suspension. If the cause of the suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the Cloud Service. If Client fails to take such actions within a reasonable time, IBM may terminate the Cloud Service.

Any changes to the Service Description by IBM will be effective upon the next agreed renewal or extension. IBM may modify the computing environment used to provide a Cloud Service, without degrading its functionality or security features.

Services – Other Services

IBM provides consulting, installation, customization and configuration, maintenance, and other services as detailed in an Attachment or TD. Client will own the copyright in works of authorship that IBM develops for Client under a Statement of Work (SOW) (Project Materials). Project Materials exclude works of authorship delivered to Client, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). Some Existing Works are subject to a separate license agreement (Existing Licensed Works). A Program is an example of an Existing Licensed Work and is subject to the Program terms. IBM grants Client an irrevocable (subject to Client's payment obligations), nonexclusive, worldwide license to use, execute, reproduce, display, perform and prepare derivatives of Existing Works that are not Existing Licensed Works. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

Machines and Appliances

A **Machine** is an IBM-branded device including its features, upgrades, and accessories. An **Appliance** is a Program and Machine combination designed for a particular function. Unless otherwise provided, terms that apply to a Program apply to the Program component of an Appliance and terms that apply to a Machine apply to the Machine component of an Appliance. Client may not use or transfer an Appliance's Program component independently of the Appliance.

When IBM accepts Client's order, IBM transfers title to Machines and non-IBM machines to Client or Client's lessor upon payment of all amounts due, except in the United States where title transfers upon shipment. IBM bears risk of loss until delivery to the carrier for shipment. IBM pays for insurance on Client's behalf until delivery to Client's location. Client must report any loss in writing to IBM within 10

business days of delivery and follow the claim procedure. If IBM is responsible for installation, Client will allow installation within 30 calendar days of shipment or additional charges may apply. Client must follow instructions provided to install Client set up Machines.

Machines and parts removed or exchanged for upgrade, warranty service, or maintenance are IBM property and must be returned to IBM promptly. A replacement assumes the warranty or maintenance status of the replaced part. A Machine may include parts that are not new and in some instances Machines may have been previously installed. Regardless, IBM's warranty terms apply. Client will promptly install or allow IBM to install mandatory engineering changes. Client may only acquire Machines for use within Client's Enterprise in the country where acquired and not for resale, lease, or transfer. Lease-back financing is permitted.

Machine Code and Built in Capacity

Machines may include **Machine Code (MC)** and **Built in Capacity (BIC)**. MC is computer instructions, fixes, replacements and related materials, such as data and passwords relied on, provided, used with or generated by MC, that permit the operation of the machine's processors, storage or other functionality. MC is copyrighted and licensed (not sold). IBM only provides copies, fixes or replacements for MC for Machines under warranty or IBM maintenance, or under a separate written agreement which may be subject to additional charges. Client agrees that all copies, fixes or replacements for MC will be obtained solely as authorized by IBM. IBM grants Client a nonexclusive license to use MC only (i) on the Machine for which IBM provided it, and (ii) to access and use BIC only to the extent paid for by Client, activated by IBM and subject to the Attachment called IBM Authorized Use Table for Machines (AUT) available from IBM and at http://www.ibm.com/systems/support/machine_warranties/machine_code/aut.html. BIC is computing resource (e.g. processors, storage and other functionality) that IBM provides for a Machine. Use of BIC may be restricted by contract, technological or other measures. Client agrees to IBM's implementation of technological and other measures that restrict, monitor and report on use of BIC or MC, and to install any changes IBM provides. Client may not alter, reverse assemble, reverse compile, translate or reverse engineer the MC, or circumvent or interfere, by any means, with IBM's contractual, technological or other measures that restrict, monitor or report on use of BIC or MC. Client may transfer possession of MC only with transfer of the Machine. Client may not transfer its license to MC; the transferee must acquire a license directly from IBM. This Agreement governs MC and BIC on Machines acquired from another party. Use of BIC in excess of authorizations from IBM is subject to additional charges.

Warranties and Post Warranty Support

IBM warrants that Programs used in their specified

operating environment conform to their official published specifications. The warranty period for a Program (not the Program component of an Appliance) is one year, or the initial license term if less than one year, unless another warranty period is specified in an Attachment or TD. During the Program warranty period, IBM provides Software Subscription and Support (S&S), entitling Client to defect correction information, restrictions, bypasses, and new releases and versions IBM makes generally available.

Unless Client elects to discontinue S&S, annual S&S automatically renews at then-current charges until S&S for a version or release is withdrawn. If Client elects to continue S&S for a Program at a designated Client site, Client must maintain S&S for all uses and installations of the Program at that site.

IBM warrants that it provides Cloud and other Services using commercially reasonable care and skill in accordance with the applicable Attachment or TD, including any completion criteria, and that Project Materials will comply with the Attachment or TD at the time of delivery. The warranty for a Service ends when the Service ends.

IBM warrants that Machines used in their specified operating environment conform to their official published specifications. For a Machine or Appliance, the warranty period is specified in the Attachment or TD. During its warranty period, IBM will repair or exchange the Machine without charge, as specified in the Attachment. Client may purchase warranty service upgrades and post warranty support where available. For Appliances, post warranty support includes maintenance and S&S.

If a Machine or Program does not function as warranted during its warranty period and IBM is unable to repair or replace it with a functional equivalent, Client may return it to IBM for a refund of the amount Client paid (for recurring charges, up to twelve months' charges) and Client's license or right to use it terminates.

IBM does not warrant uninterrupted or error-free operation of an IBM Product or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access to an IBM Product. These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated in an Attachment or TD. Non-IBM Products are sold under this Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client.

Liability and Indemnity

IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the product or service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM Product acquired under this Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

IBM has no responsibility for claims based, in whole or part, on Non-IBM Products, items not provided by IBM, or any violation of law or third party rights caused by Client's content, materials, designs, specifications, or use of a non-current version or release of an IBM Product when an infringement claim could have been avoided by using a current version or release.

Governing Laws and Geographic Scope

Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Client is responsible for its use of IBM and Non-IBM Products.

General

Client accepts an Attachment or TD by ordering, enrolling, using, or making a payment for, the product, offering or service. Since this Agreement may apply to many future orders, IBM reserves the right to modify it by providing Client at least three months' written notice. However, changes are not retroactive; they apply, as of the effective date, only to new orders and renewals. For transactions with a defined renewable contract period, Client may request that IBM defer the change effective date until the end of the current contract

period. Client accepts changes by placing new orders after the change effective date or allowing transactions to renew after receipt of the change notice.

Except as provided above, all changes to the agreement must be in writing signed by both parties. If there is a conflict, an Attachment or TD prevails over the terms of this agreement.

Client is responsible for obtaining all necessary permissions to use, provide, store and process content in Cloud, other Services, maintenance, or Program support, and grants IBM permission to do the same. Client is responsible for adequate content back-up. Some of Client's content may be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering. Client will not input or provide such content unless IBM has first agreed in writing to implement additional required security measures.

IBM and its affiliates, and their subcontractors, may process and store business contact information of Client personnel in connection with the performance of this Agreement wherever they do business. IBM may use personnel and resources in locations worldwide and third party suppliers to support the delivery of products and services.

Any reproduction of the Agreement made by reliable means is considered an original. The Agreement supersedes any course of dealing, discussions or representations between the parties.

No right or cause of action for any third party is created by this Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to this Agreement more than four years after the cause of action arose. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control.

Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld.

The Agreement applies to IBM and Client (the signatories below) and their respective Enterprise companies who avail themselves of the Agreement. The signatories shall coordinate the activities of Enterprise companies under this Agreement. Enterprise companies include (i) companies within the same country that Client or IBM control (by owning greater than 50% of the voting shares), and (ii) any other entity that controls, is controlled by or is under common control as Client or IBM and has signed a participation Attachment.

DELEGATION OF AUTHORITY

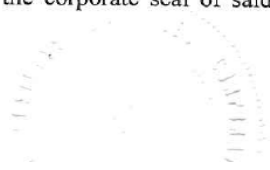
I, Jennifer Shufelt, Associate General Counsel, IBM Global Markets, North America do hereby certify that said Associate General Counsel, in accordance with and pursuant to resolutions of the Board of Directors of International Business Machines Corporation ("IBM") duly adopted at a meeting duly held and called on April 25, 1994, and those certain Letters of Authority dated November 15, 1995, and May 6, 2011, has been duly authorized to execute and deliver in the name of and on behalf of IBM any contract or other document or instrument necessary or appropriate in the ordinary course of IBM's business, including, but not limited, to bid documents for the sale of IBM products and services to federal, state and local governments and agencies, purchase orders and sales agreements and the like, and to delegate this authorization within the IBM organization in the United States, including Puerto Rico; and that said authorization has not been modified, amended or rescinded and continues in full force and effect. So authorized, I hereby delegate said authority to execute and deliver in the name of and on behalf of IBM any such contract or other document or instrument reasonably related to, or performed in accordance with, the job duties, and/or responsibilities of the persons holding the below listed positions in the IBM organization in the United States, including Puerto Rico:

- President
- Treasure
- Vice President
- General Manager
- Chief Financial Officer

Position titles that include the words:

- Attorney
- Business Operations Manager
- Client Manager
- Client Relationship Representative
- Contract Administrator
- Contract Professional
- Contracts & Negotiations
- Counsel
- Customer Fulfillment Manager; Customer Fulfillment Professional
- Deal Maker
- Director
- Executive
- IT Architect
- IT Consultant
- IT Specialist
- Operations Manager
- Operations Specialist
- Partner
- Portfolio Specialist
- Practice Leader
- Practice Manager
- Program Manager
- Quality Assurance Manager; Quality Assurance Representative
- RFS Portfolio Specialist
- RFS Portfolio Specialist
- Sales Manager
- Sales Representative
- Sales Specialist
- Software Client Leader (SCL)
- Service Delivery Manager
- Software Engineer
- Solution Representative
- System Service Representative

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said International Business Machines Corporation on this 6th day of February 2020.



J Shufelt

 Jennifer Shufelt
 Associate General Counsel

Attachment 2

- Master Services Attachment for ServiceElite
- Statement of Work for ServiceElite – Managed Technical Support (MMLE Tool)
- Statement of Work for ServiceElite -- Custom Technical Support
- Statement of Work for ServiceElite -- Proactive Support Service
- Statement of Work for ServiceElite – Machine Control Program Remote Support
- Agreement for Power Systems Temporary Capacity on Demand
- Supplement for Power Systems Temporary Capacity on Demand



Master Services Attachment for ServiceElite

Scope of Services

IBM will provide you Services as described in this Attachment and, if applicable, its Statements of Work and Change Authorizations to support your hardware and operating system software products (called "Eligible Machines," "Eligible Programs," and together "Eligible Products"). This attachment and Schedule for ServiceElite A82BGQ is valid for the duration of five (5) years. Services are available for Eligible Products normally used for business, professional, or trade purposes, rather than personal, family, or household purposes.

IBM will identify the Eligible Products, the Services that apply to them, and the Services transaction contract period in Schedules that reference this Attachment and any associated Statements of Work and Change Authorizations. Each Schedule will also identify the Specified Locations at which the Services will be provided. A Specified Location may be your entire information processing environment, or a portion thereof, which may be resident at multiple sites or a single building.

The specific terms regarding Eligible Machine Services and Eligible Program Services contained in this Attachment and its Statements of Work and Change Authorizations apply only when you have contracted for an associated Eligible Machine maintenance Service or Eligible Program support Service as specified in a Schedule.

IBM Responsibilities

When you contract for an applicable Service, IBM agrees to deliver the Service in accordance with the terms and responsibilities identified in the Service description set out in this Attachment or an associated Statement of Work or Change Authorization. For basic maintenance of IBM Machines, the Service description is set out in our Agreement (referenced in the signature block below).

Your Responsibilities

When you contract for an applicable Service, you agree:

1. to provide IBM with an inventory in which you identify all Eligible Products to be covered at each Specified Location and to notify IBM whenever you wish to move, add, or delete Eligible Products at an existing Specified Location or set up new Specified Locations;
2. to return to IBM all defective CRUs (from covered Eligible Machines) within 15 days of your receipt of the replacement CRU. A "CRU" is a Machine part which is designated as a Customer Replaceable Unit (e.g. keyboards, memory, or hard disk drives). IBM provides CRUs to you for replacement by you;
3. that when the Service includes IBM providing you with access to electronic diagnostic tools, information databases, or other Service delivery facilities, you will limit the use of these to only those who are authorized to use them under your control and only in support of Eligible Products and Services identified in Schedules;
4. to provide IBM with information it requests which is related to its provision of the Services to you and to notify IBM of any changes;
5. that you authorize International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors) to store and use your business contact information wherever they do business, in connection with IBM products and services or in furtherance of IBM's business relationship with you;
6. to pay any communications charges associated with accessing these Services unless IBM specifies otherwise in writing; and
7. to use the information obtained under these Services only for the support of the information processing requirements within your Enterprise.
8. to securely erase from any Machine that you return to IBM for any reason all programs not provided by IBM with the Machine and data, including without limitation, the following: 1) information about identified or identifiable individuals or legal entities ("Personal Data") and 2) your confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, you agree to transform such information (e.g., by making it anonymous or encrypting it) so that it no

longer qualifies as Personal Data under applicable law. You also agree to remove all funds from Machines returned to IBM. IBM is not responsible for any funds, programs not provided by IBM with the Machine, or data contained in a Machine that you return to IBM. You acknowledge that, to perform its responsibilities under this Agreement, IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world, and you authorize IBM to do so.

Automatic Inventory Increase for Machine and Software Maintenance Services

If specified as a selected option in the Schedule, IBM will automatically increase the inventory count and associated Services at Specified Locations per the terms set out below.

OPTION #1 - MACHINE MAINTENANCE SERVICES

IBM will automatically increase the inventory count and associated Machine maintenance Services whenever:

1. an Eligible IBM Machine is added to the inventory. If the Machine is under warranty when added, maintenance Services will commence at warranty exit. If the Machine is not under warranty when added, maintenance Services will commence at the later of a) the date of installation or b) the previous yearly anniversary of the start of the transaction contract period (what does this mean). IBM Machines specifically excluded from coverage at transaction contract period start will remain outside the scope of this Section unless you request IBM add them during the transaction contract period. However, all Eligible IBM Machines added to your inventory during the transaction contract period will be included in the inventory count and receive maintenance Services as set out in this Section.
2. an Eligible non-IBM Machine, of the same type as other non-IBM Machines already covered at that Specified Location, is added to the inventory. If the Machine is under warranty when added, maintenance Services will commence at warranty exit. If the Machine is not under warranty when added, maintenance Services will commence at the later of a) the date of installation or b) the previous yearly anniversary of the start of the transaction contract period.

The maintenance Services that apply for these Machines will be the same as that which you are receiving for all other Eligible Machines of the same type at the Specified Location.

Newly installed IBM Machines of the same type for which you have already selected Warranty Service Upgrade will be added at date of actual installation and will be covered at the same Warranty Service Upgrade support level.

If at any time either of us requests a review of the inventory count, each of us will provide reasonable cooperation to the other in updating the last formal inventory.

OPTION #2 - SOFTWARE SERVICES

IBM will automatically increase the inventory count and associated software Services whenever an Eligible Program licensed for use on an Eligible IBM Machine is added to the inventory. The software maintenance Services that apply for these programs will be the same as that which you are receiving for all other copies of the Program licensed for use on Eligible IBM Machines of the same type at the Specified Location.

These software Services will commence immediately upon addition of the Eligible program to the inventory except that for software maintenance Services, a) if the Program is covered under the Agreement for Acquisition of Software Maintenance when added to the inventory, then software maintenance Services via ServiceElite will commence at the expiration date of that support period, or b) if the Program is not covered under the Agreement for Acquisition of Software Maintenance when added to the inventory, then software maintenance Services via ServiceElite will commence immediately and After License Fees may apply.

If at any time either of us requests a review of the inventory count, each of us will provide reasonable cooperation to the other in updating the last formal inventory.

Charges and Payment

Your charges are calculated taking into account your Service selections, price protection option, payment option, and for prepayments, length of the prepay period. You agree to pay by electronic funds transfer to an account provided by IBM or other means as agreed by both of us.

PRICE PROTECTION FOR ENTIRE TRANSACTION CONTRACT PERIOD, INCLUDES PROTECTION FOR NEWLY ADDED MACHINE TYPES.

For the entire transaction contract period, charges for included Eligible Product configurations and Services will not increase. All newly added Eligible Products and Services, as well as changes to existing Eligible Product configurations and Services, will assume the charge rate that applied for these at transaction contract period start. Eligible Products and Services that become generally available during the transaction contract period will be added at the charge rate that applied on their initial availability date. You will receive the benefit of a decrease in applicable charges for amounts which become due on or after the effective date of the decrease.

Price Increases

At the beginning of a new contract transaction period charges will be limited to the applicable then current GSA Schedule.

FOR EACH TRANSACTION PACKAGE, THE FOLLOWING CHARGE ADJUSTMENT TERMS APPLY.

Total Services charges may be adjusted whenever:

1. a review of the inventory count indicates a change from the last accounting; or
2. a Specified Location, Eligible Machine type, or Service is added, deleted, or changed.

For all Service charges based on usage, upon IBM's request you will immediately provide IBM with the actual meter reading recording the actual usage.

IBM may charge you directly for certain expenses IBM incurs in performance of a Service for you (e.g. actual travel and living expenses, out-of-pocket expenses). IBM will not incur these expenses without your prior approval.

Renewal and Termination

IBM will automatically renew Services unless you request otherwise. For each transaction the Schedule will specify the number of years (0 or greater) in the Renewal Contract Period. Whenever this number is greater than 0, IBM will renew the applicable Services at the end of the transaction contract period for the number of years specified. Thereafter, IBM will automatically renew the Services for same length periods unless you notify IBM in advance of your desire to change the length of the renewal. You or IBM can select not to renew by providing written notification (at least one month prior to the end of the current transaction contract period) to the others of its decision not to renew. Nonrenewal notification sent to you by IBM or received by IBM from either you will result in IBM ceasing to provide you the applicable Services at the end of the current transaction contract period.

In the case of renewals, charges are recalculated at the start of each renewal period. The new charges will be based on the length of the Renewal Contract Period and then current charges associated with your contracted a) Services, b) price protection option, and c) payment option.

You have committed to continue Services for the entire transaction contract period. However, you may terminate Services for an Eligible Product, on notice to IBM, if you permanently remove it from productive use within your Enterprise. You may also terminate Services immediately prior to the start of any fiscal year for which funds have not been appropriated. You agree to request such funds from the applicable legislative body.

Termination adjustment fees will not apply and you will receive a credit for any remaining prepaid period associated with Services you terminate in accordance with this provision.

Governing Law

As pertains to your contracted Services, the laws of the State of Florida govern our Agreement, this attachment, and associated Statements of Work and Change Authorizations.

Services

Warranty Service Upgrade

For certain Eligible Machines, you may select a Service upgrade from the standard type of warranty Service for the Machine. IBM provides Service for Machines as described in our Agreement but charges for the upgrade in type of Service during the warranty period.

Certain Machine types may require the installation and use of remote connectivity tools and equipment for direct problem reporting, remote problem determination and resolution.

You may not terminate the Service upgrade or transfer it to another Machine during the warranty period. When the warranty period ends, the Machine will become part of your standard inventory count and will convert to maintenance Service at the same type of Service you selected for warranty Service upgrade.

Maintenance of IBM Machines

IBM will provide Service for Machines, as described in our Agreement, for those Eligible IBM Machines specified in the Schedule.

Maintenance of Non-IBM Machines

IBM will provide Service for Machines, as described in our Agreement, for those Eligible non-IBM Machines specified in the Schedule. Unless specified otherwise in the Schedule, Service is provided only for the manufacturer's base configuration for each covered Machine model. You are responsible for following the manufacturer's and IBM's provided guidelines pertaining to operator responsibilities, maintenance procedures, and supplies prior to placing a Service request.

Repair of non-IBM Machines is subject to the availability of repair parts and any technical support required of the original manufacturer. Repair parts will be functionally equivalent to those replaced. They may be new or used and may have been manufactured by other than the original manufacturer. You may request that IBM use repair parts manufactured by the original manufacturer when these are available, but there may be an additional charge for these parts.*

IBM's support does not cover:

1. Machine installation, engineering change activity, or preventive maintenance;
2. correction of date related errors. IBM will make the final determination of whether a date related error is the source of the problem;
3. service of microcode or firmware;
4. service of features, parts, or devices not supplied by either a) the Machine's original manufacturer or b) IBM during the performance of this Service;
5. service for accessories, supply items, and certain parts, such as batteries, frames, and covers;
6. service of a Machine damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by you;
7. service of a Machine with removed or altered Machine or parts identification labels;
8. failures caused by a product for which IBM is not responsible; or
9. service of Machine alterations.

Upon written notice, IBM may terminate coverage for an Eligible non-IBM Machine due to lack of available repair parts or lack of original manufacturer technical support.

Eligible non-IBM Machines must meet IBM's safety and serviceability requirements. IBM reserves the right to inspect a Machine within one month from the start of Service. If the Machine is not in an acceptable condition for Service, IBM will notify you and terminate coverage.

You agree to provide IBM one month's written notice prior to terminating coverage for a Machine being permanently removed from productive use within your Enterprise.

IBM Software Maintenance for AIX Operating Systems IBM will provide software maintenance support, as described below, for those Eligible Programs for which you are licensed and for which you order this Service.

General:

1. IBM makes available to you the most current commercially available version, release or update to all of the Programs for which you acquire support under this Service, should any be made available. Information on ordering versions, releases or updates can be found at <http://www.ibm.com/servers/eservers/ess>, and selecting the Entitled Software Update ("EUS") screen tab.
2. IBM provides you with assistance for your a) routine, short duration installation and usage (how-to) questions and code defect related questions.
3. IBM provides assistance via telephone and, if available, electronic access, only to your information systems (IS) technical support personnel during normal business hours (normal business hours are 8 a.m. to 5 p.m. in the local time zone where you receive this Service, Monday through Friday, excluding national holidays). This assistance is not available to your end users. IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Guide, which may be found at <http://techsupport.services.ibm.com/guides/handbook.html> for details. A 24x7 (every day of the year) all severity option is available at extra charge.* During normal business hours, IBM's response time objective is two hours for voice and electronic problem submissions. For voice problem submissions during other than normal business hours, IBM's response time objective for critical problems (Severity 1) is two hours and if you select the 24x7 all severity option, four hours for non-critical problems. For electronic problem submissions during other than normal business hours, IBM's response time objective is within two hours of the start of normal business hours on the next business day. IBM's initial response (either voice or electronic) may result in resolution of your problem or it will form the basis for determining what additional actions may be required to achieve technical resolution of your problem. IBM is not responsible for delays in electronic response delivery caused by systems and network problems.
4. In some instances, IBM may request that you allow it to remotely access your system to assist you in isolating the software problem cause. You will remain responsible for adequately protecting your system and all data contained therein whenever we remotely access it with your permission.
5. This Service does not include assistance for a) the design and development of applications, b) your use of Programs in other than their specified operating environment, or c) failures caused by products for which IBM is not responsible under this Service; and
6. This Service is provided by United States personnel solely for servers that are located within the United States. For calls that originate from outside of the United States: 1) toll free telephone access is not available, 2) "8:00 a.m. to 5:00 p.m. in the local time zone" is defined as the time zone where your designated Point of Contact resides, Monday through Friday (excluding national holidays), 3) replies or other return communication to the caller will be via electronic means only, 4) software "traps" or other tools that may be necessary to diagnose problems will be sent only to the United States server location, and 5) the diagnosis and repair of data encryption will be discussed only with personnel at the United States server location.

Eligible Programs: Licensed programs for which this Service is available are listed at <http://www.ibm.com/services/sl/swm/> or may be obtained from your IBM marketing representative. The listing of Eligible Programs contains the last date of service for each respective release of licensed programs. IBM will support only current releases. It is your responsibility to insure that, when calling in for service, your software is current.

Software Maintenance After License Fee: The Software Maintenance After License fee is a one time charge to resume Software Maintenance if you a) did not renew this Service prior to the end of the then current support period or b) terminated this Service. The new support period in such an instance begins on the date that IBM accepts your order.

Managed Technical Support

Scope of Work

The IBM Managed Technical Support is comprised of the services described herein (called "MTS Services") which includes, as activities, various service elements designed to provide support to you.

Under the IBM Managed Technical Support, IBM will provide a Delivery Project Manager who will assist you in coordinating and managing technical support for your Eligible Machines (IBM and non-IBM) and Eligible Programs covered by MTS Services.

The MTS Services is comprised of the following activities:

- a) Delivery Management composed by various Service Elements;
- b) a set of deliverables created based on your managed technical support requirements.

Definitions

- a) Eligible Machines and Eligible Programs mean respectively 1) Machines that are specified as Eligible Machines and Programs which are specified as Eligible Programs which are covered under MTS Services.
- b) Service Element means a basic building block of activities which is designed to meet your specific requirements.

General Services

The responsibilities detailed in this section will apply to the contracted MTS Services

Project Management

IBM Delivery Project Management Responsibilities

The purpose of this activity is to identify an IBM Delivery Project Manager who will establish a framework to communications, reporting, procedural and contractual activities under the IBM Managed Technical Support Services engagement. The IBM Delivery Project Manager will:

- a) establish and maintain communications through your Point of Contact
- b) conduct quarterly regular status meetings throughout the technical support engagement ; and c)
prepare Status Reports

Your Point of Contact Responsibilities

Prior to the start of the Services you will designate a person (called "your Point of Contact") to whom all communications relative to the Services will be addressed and who will have the authority to act on your behalf in all matters regarding the MTS Services. Your Point of Contact will:

- a) serve as the interface between the IBM Delivery Project Manager and all your departments, organizations and locations participating in the MTS Services.
- b) Be responsible for providing responses to requests within an agreed upon timeframe as required by IBM to perform the MTS Services.
- c) coordinate, manage and be responsible for the activities of your personnel

- d) communicate to the IBM Delivery Project Manager any changes that may materially affect IBM's provision of the MTS Services
- e) coordinate resolution of issues raised by the IBM Delivery Project Manager and, as necessary, escalate such issues within your organization;
- f) ensure that tasks assigned to personnel within your organization will be completed; and
- g) as required, participate in status meetings with the IBM Delivery Project Manager.

County General Responsibilities

County will:

- a) Provide suitable office space, supplies, furniture, high-speed connectivity to the Internet, and other facilities for IBM's personnel at no charge to IBM while working on your premises.
- b) Be responsible for the content of any database, the selection and implementation of controls on its access and use, backup and recovery and the security of the stored data. This security will also include any procedures necessary to safeguard the integrity and security of software and data used in the MTS Service from access by unauthorized personnel; and
- c) Ensure that current hardware and software support agreements, maintenance and license agreements are in place with applicable Service Providers for those products and services upon which IBM is relying to provide the MTS Services described herein.

Inventory Review

The purpose of this Service element as part of the Delivery Management Service activity, is to include the tracking of Eligible Machines (IBM and non-IBM) installed and Eligible Programs for reporting purposes. You are responsible for the notifying IBM of any inventory that is added, moved, deleted from the original base.

IBM Responsibilities

Activity 1 – Inventory Review

IBM will:

- a) Prepare and review a listing of Eligible Machines and Eligible Programs in your hardware and software environment on a quarterly basis.
- b) Recommend any suggestions from a technical point of view.

County Responsibilities

County agrees to:

- a) Provide IBM 30 day's notification to modify any information on any additions/deletions/changes made to your hardware and software environment.
- b) Ensure that your Point of Contact reviews any applicable recommended suggestions as provided by the IBM Delivery Project Manager.

Support Line

IBM will provide you remote assistance with the operation of supported products and system environments. In addition, you may order certain optional features which are enhancements to this Service. These terms also apply for each of these optional features unless IBM specifies otherwise.

Definitions

Customer Critical Problem means a problem for which you have no known work around resulting in a critical disruption in your business operations.

Full Shift means 24 hours a day, seven days a week, including national holidays.

Off Shift means all hours outside of Prime Shift.

Prime Shift means 8 a.m. to 5 p.m. in the local time zone where you receive the Service, Monday through Friday (excluding national holidays).

Supported Products means those products and system environments identified in the Supported Products List for your support groups located at IBM's Internet address <http://www.ibm.com/services/sl/products> or as otherwise provided by IBM. The Supported Products List will change periodically to reflect Supported Product additions (for example, adding new products) or deletions (for example, deleting products at their end of currency date).

IBM Responsibilities

IBM will provide you remote assistance (via telephone from IBM's support center or via an electronic search and questioning capability) in response to your requests pertaining to the following:

For all Supported Products in your covered support groups --

1. basic, short duration installation, usage, and configuration questions; and
2. questions regarding IBM Supported Product publications.

For all IBM software Supported Products in your covered support groups –

1. code-related problem questions;
2. diagnostic information review to assist in isolation of a problem cause (for example, assistance interpreting traces and dumps for installation and code related problems); and
3. for known defects, available corrective service information and program fixes which you are entitled to receive under the terms of the IBM license.

When you report a problem with covered non-IBM software Supported Products, IBM will provide a primary point of contact for all support requests. IBM will assist you by providing level 1 and level 2 support, which includes assistance for installation usage and configuration questions and provide general guidance on product documentation. IBM will also assist with isolating the problem cause and provide you recovery information, if available, from the vendor. For known defects, IBM will provide corrective service information and program fixes, if available and IBM is authorized to provide to you. If a new (unknown) defect is identified, IBM will report it to the appropriate vendor and notify you of our actions. At this point IBM will consider its support requirement fulfilled since resolution of these defects is the responsibility of the vendor.

For the Linux support groups, IBM may make available new fixes to the Red Hat and SUSE Enterprise releases of the Linux operating system open source components for IBM supported Linux distributions. IBM may make available emergency source code fixes as new defects are reported. IBM is not a Linux distributor and does not distribute patches, maintenance updates or refreshes. You must receive maintenance updates and refreshes directly from the Linux distributor under the terms of their license. IBM will make these new source code fixes available to the Linux distributor and the open source maintainer for inclusion and distribution as errata updates and patches. IBM will support and maintain these new source code fixes until such time that the Linux distributor or open source maintainer incorporates them or develops an alternate fix and distributes as errata update or patch. At such point IBM will consider its support requirement fulfilled.

Response Criteria

If not initially answered by a Service technician, IBM will use commercially reasonable efforts to respond, by telephone, to Support Line Service calls from you within two hours during Prime Shift. IBM's initial response may result in resolution of your request or it will form the basis for determining what additional actions may be required to achieve technical resolution of your request. If you select Full Shift coverage during Off Shift IBM will use commercially reasonable efforts to respond to Support Line Service calls which you specify to be Customer Critical Problems within

two hours and all other Support Line Service calls within four hours.

Electronic Support

You will also be able to electronically submit Support Line Service requests for Supported Products, provided you have Internet access. IBM will use commercially reasonable efforts to respond to each electronic Service request from you within two hours of receipt during Prime Shift. For electronic Service requests received during Off Shift, IBM will use commercially reasonable efforts to respond within two hours of the start of Prime Shift on the next business day. IBM is not responsible for delays in response delivery caused by systems and network problems.

County Responsibilities

County agrees to:

1. ensure you are properly licensed to all software and have a current subscription (where required) for the Supported Products for which you request assistance;
2. retrieve and review a current Supported Products List on a regular basis to verify whether there have been any additions or deletions within your covered support groups;
3. ensure that any access codes IBM provides to you are used only by your authorized personnel;
4. designate a technically qualified representative (called "Primary Technical Contact") who will be your focal point to whom IBM may direct general technical information pertaining to your Supported Products. Your Primary Technical Contact and each caller must have sufficient technical knowledge of your Supported Product environment to enable effective communication with IBM's support center;
5. provide IBM with all relevant and available diagnostic information (including product or system information) pertaining to software problems you request assistance with;
6. if necessary, provide IBM with appropriate remote access to your system to assist you in isolating the software problem cause. You will remain responsible for adequately protecting your system and all data contained therein whenever IBM remotely accesses it with your permission; and
7. provide IBM with written notice of changes to your machine inventory within one month after the change occurs. Such changes may cause a revision to your charges for this Service. (Note: This responsibility does not apply for Enterprise Support.)

Enterprise Support

If you select Enterprise Support you will receive Support Line Service coverage, as described above, for all Supported Products that are part of your business systems environment. You agree to provide IBM an initial inventory of your Supported Products, including the machines on which they are installed, and inform IBM of inventory changes (additions/removals) prior to each yearly anniversary of the start of the transaction contract period. Your machine and Supported Product install base at the start of each contract year will be used to determine charges for that year.

Linux Product Subscription Option

For Supported Products in the Linux support group, you may also order this subscription option as an added Support Line Service feature. Under this feature, IBM will assist you in the ordering and receipt of eligible Linux subscription products. You will identify a subscription coordinator who will be the focal point for all your Linux supplier-licensed subscription product orders and deliveries under this Support Line Service feature.

The Linux supplier-licensed software is directly distributed and licensed to you by the Linux supplier under the terms and conditions of the supplier's end user license agreement ("EULA"). While IBM may have placed the order with supplier for the supplier-licensed software on your behalf, as a convenience for you, you acknowledge and understand that IBM is neither a party to the EULA nor a distributor, licensor, or reseller of the Linux supplier-licensed software. While the Linux supplier may provide you with certain warranties, representations, or indemnities under the EULA, IBM is not providing, whether express or implied, any warranty, representation, indemnity, or other license with respect to the Linux supplier-licensed software and is merely providing Services under this agreement on your behalf at your request. Without limiting the generality of the foregoing, IBM is providing no indemnity for any claim or alleged claim that all or any portion of the Linux supplier-licensed software may infringe a third party's intellectual property right.

Termination

You may terminate Support Line Service for any support group or any optional feature on one month's written notice to IBM after it has been contracted for at least one year. However, you may not terminate Support Line if you have elected to continue feature support. IBM may withdraw Service for a support group on the Supported Products List on three months' written notice to you. Other changes to the Supported Products List (for example, addition of new products or deletion of products at their end of currency date) will be posted to the Supported Products List at <http://www.ibm.com/services/sl/products> as they occur. If IBM withdraws or either of us terminate a Support Line Service or optional feature as provided herein, and it is a Service or feature for which you have prepaid and IBM has not yet fully provided to you, upon your request you will be provided a prorated credit.* This will apply if IBM withdraws support for an entire support group but not if IBM simply withdraws support for individual products. For the Linux Product Subscription Option, termination by you is not subject to prorated refund or credit for the prepaid charges.

Machine Control Program Remote Support

This remote support Service is provided only for Machine Control Programs. The term "Machine Control Program" ("MCP") means code delivered with an IBM Machine that executes below the external user interface (i.e., is implemented in a part of storage that is not addressable by user programs).

IBM will provide you remote assistance (via telephone from IBM's support center or via electronic access) in response to your routine installation, configuration, and usage (how-to) questions pertaining to MCPs on your covered IBM Machines. This assistance is provided during normal business hours (8 a.m. to 5 p.m. in the local time zone where you receive the Service, Monday through Friday, excluding national holidays). For an additional charge,* you may upgrade your Service hours of coverage to 24 x 7.

Remote Support does not include assistance for 1) the design and development of code, 2) your use of a MCP in other than its specified operating environment, 3) use on other than the specified machine, or 4) failures caused by products for which IBM is not responsible under this Service. This Service does not include on-site assistance at your location.

pSeries Software Services

Alert for pSeries provides automatic daily notification of the following for selected IBM Products: 1) High Impact and Pervasive Authorized Program Analysis Reports (called "HIPER APARS"), 2) any Program Temporary Fixes we discover to be defective (called "PE PTFs"), 3) latest available fixes, and 4) security advisories. IBM provides notification via e-mail for up to three different addresses of your choice.

IBM Responsibilities

IBM will provide you Alert notifications regarding each of your specified pSeries systems based on the parameters you choose when setting up this Service. If you implement IBM Service Agent, IBM will tailor the maintenance information that it provides to you for your specific environment.

Your Responsibilities

If you do not currently have an IBM Registration ID, you agree to obtain one at <https://www.ibm.com/account/profile/us?page=reg>. The IBM Registration ID must be used to 1) access the Alert Web site, 2) set up your preferences for Alert notifications, and 3) indicate which type of notifications you choose to receive.

This 1) Attachment, 2) its applicable Transaction Documents (e.g., Statements of Work, Schedules, and Change Authorizations), and 3) the IBM Customer Agreement (or an equivalent agreement in effect between us) identified below comprise the complete agreement regarding the Services described in this Attachment and its applicable Transaction Documents and replace any prior oral or written communications between Customer and IBM. In entering into this Attachment, neither party is relying on any representation that is not specified in the Attachment or the documents specified in the preceding sentence, including without limitation any representations concerning:

1) estimated completion dates, hours, or fees to provide any Service; 2) the experiences or recommendations of other parties; or 3) results or savings Customer may achieve. Each party accepts the terms of this Attachment by signing this Attachment (or another document that incorporates it by reference) by hand or, where recognized by law, electronically.

Statement of Work for ServiceElite



Both of us agree to add the following Services as part of our ServiceElite contract.

Managed Technical Support

1 Service

IBM Managed Technical Support (MTS) includes the optional services described herein (MTS Services), selected by Client based on Client's requirements. IBM will coordinate MTS Services with Client's Point of Contact (POC).

2 Hardware and Software Delivery Management

IBM will identify an IBM Delivery Project Manager (DPM) to:

- a. develop a Support Plan for communications, reporting, and procedural and contractual activities. Hardware and Software Delivery Management may be performed on-site and remotely;
- b. measure, track, and evaluate progress against the Support Plan, using information from actual service call data and input from IBM representatives;
- c. establish and maintain communications through Client's POC, work with Client's POC to resolve deviations from the Support Plan, and manage escalations to Service delivery teams as needed;
- d. coordinate and manage the technical activities of assigned IBM personnel;
- e. prepare Status Reports and conduct regular status meetings to review Service delivery; and
- f. manage delivery of Eligible Products and selected Services, customized to meet Client's specific requirements.

3 Inventory Management

IBM will track installed Eligible Machines (IBM and non-IBM) and Eligible Programs in Client's environment for reporting purposes. IBM will, as specified in the Support Plan:

- a. create, maintain, and provide updates to the Inventory Report; and
- b. recommend technical improvements and updates to the Support Plan.

4 Reports and Reviews

IBM will provide Performance Reports to analyze service performance and recommendations for improvement, and if applicable, product performance analysis. IBM will:

- a. prepare Performance Reports adjusted to Client's business needs, documenting services, delivery action items, and their status;
- b. interface with POC regarding ongoing services, delivery activities, and coordination of requirements for which Client is responsible, and schedule quarterly reviews with Client management team;
- c. track service delivery performance and trends, and include this information in the Performance Report; and
- d. analyze reports and make any appropriate changes with respect to Client's input.

Client Point of Contact Responsibilities

Prior to the start of MTS Services, Client will designate the Client POC for MTS communications with authority to act on Client's behalf regarding the MTS Services. Client's POC will:

- a) serve as the interface between the IBM Delivery Project Manager (DPM) and Client departments and locations participating in MTS, and coordinate access to Client personnel and information required by IBM to perform the Services. Promptly obtain and provide requested information, decisions and approvals required by IBM;
- b) assist in the development of the Support Plan, help resolve any deviations from the Support Plan, and report and help resolve problems related to MTS;
- c) coordinate and manage Client activities so Client tasks are completed according to the Support Plan, and resolve issues, including Client escalation, as necessary;
- d) communicate to the IBM DPM any changes that may affect IBM's provision of MTS;
- e) as required, participate in status meetings with IBM;
- f) promptly notify IBM of any changes to the scope of preventive service tasks or support coverage managed under the Support Plan;
- g) work with IBM to establish Client's availability requirements;
- h) provide IBM with a detailed listing of planned changes in the environment and keep IBM advised of new changes;
- i) promptly notify IBM of any inventory that is added, moved, or deleted from the original base; and
- j) review applicable recommended suggestions.

Client is responsible for obtaining all necessary permissions to use, provide, store and process content in Services, maintenance, or Program support, and grants IBM permission to do the same. Client is responsible for adequate content back-up. Some of Client's content may be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering. Client will not input or provide such content unless IBM has first agreed in writing to implement additional required security measures.

Project Material and Existing Works

IBM will deliver the following Project Materials, as applicable:

- Client Support Plan that lists all Services provided, how to utilize the Services, contact information, and other information needed for IBM to effectively manage the Services. Updates to procedures or process deficiencies, if applicable, are documented in the Support Plan.
- Status Reports
- Service Reports
- Inventory Reports
- Transition Plan
- Procedures Plan
- Performance Reports

Client will own the copyright in Project Materials that IBM develops for Client under this Statement of Work (SOW). Project Materials exclude works of authorship delivered to Client, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). IBM grants Client an irrevocable (subject to Client's payment obligations), nonexclusive, worldwide license to use, execute, reproduce, display, perform and prepare derivatives of Existing Works. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

IBM's Data Processing Addendum (DPA) at <http://ibm.com/dpa> and the DPA Exhibit at <https://www.ibm.com/mysupport/s/article/support-privacy> apply and supplement the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) applies to Client Personal Data, as described in the DPA.

This Statement of Work, its applicable Transaction Documents, applicable Attachments, and the Agreement in

effect between us comprise the complete agreement regarding the Services described and replace any prior oral or written communications between Client and IBM. Each party accepts the terms of this Statement of Work by signing this Statement of Work by hand or, where recognized by law, electronically.



Statement of Work for ServiceElite

Both of us agree to add the following Services as part of our ServiceElite contract.

Custom Technical Support

Custom Technical Support (CTS) is optional with standard base hardware and software support services (Basic Maintenance) for Eligible Products.

1. Scope of Service

There are four Enhanced Service Modules in CTS -- Priority Access, Priority Response, Priority Handling, and Proactive Support - to provide premium remote voice and electronic entry into, and handling within, IBM's support structure to assist Client with managing and maintaining its Information Technology (IT) environment.

With the exception of the x86 server environment, IBM 24x7 Basic Maintenance (if available) is a prerequisite for each Eligible Product for which Client selects CTS coverage. Basic Maintenance is recommended for x86 server environments, not required. Basic Maintenance for software is required for x86 server environments. If 24x7 all Severity coverage is not available under Basic Maintenance for a particular Product, the most comprehensive hours of coverage available must be selected. Eligible Products are identified at www.ibm.com/services/supline/products/

2. IBM Responsibilities

The Priority Support Team (PST) is the group of skilled CTS technical support specialists responsible for tasks in the following Enhanced Services Modules. IBM will assign a named member of the PST as Client's Technical Solution Manager (TSM). Members of the PST also assist the TSM with the provision of all aspects of CTS.

2.1 Priority Access

IBM provides direct priority access to a team of skilled resources as an initial point of contact for problem submissions on Eligible Products. The TSM will, during the Welcome Call, provide Client with a unique CTS Direct Access Code (DAC), and ensure that Client is able to maximize the features of CTS.

Client may submit problems via voice using Client's unique DAC or by electronic problem reporting using the IBM support portal. If reporting problems electronically, Client must have the DAC in Client's IBM ID profile and select the appropriate problem type routing for CTS level responses.

2.2 Priority Response

Response Time is the elapsed time between IBM technical support's receipt of Client's problem submission and IBM's acknowledgment of the submission. The PST uses reasonable efforts to respond within the Targeted Response Time Objectives, based on the Severity of the problem and the time that Client reports the problem. IBM's initial response may resolve the problem or form the basis for determining if additional actions are required. Response Times are objectives only. IBM is not responsible for delays caused by systems and network problems.

Targeted Response Time Objectives

For United States (USA) Telephone Assistance: all Severity and all shift response time objective is 30 minutes.

For Electronic Assistance, all Severity and all shift response time objective is 60 minutes.

2.3 Priority Handling

The PST performs initial problem determination, problem source identification, and direct resolution, if possible. If additional resources are required for resolution, the PST will, based on the identified source and severity of the problem:

For all Severity Eligible Program (software) problems, engage the appropriate support resources, coordinate and manage the contributions of those resources, monitor the progress of Client problem submissions, and provide regular status updates.

- (1) For all Severity hardware problems reported via the CTS DAC, engage the appropriate support resources, offer coordination and management assistance for problems being handled by remote IBM support, and provide an escalation path as needed.
- (2) For all Severity hardware problems reported via non-CTS DAC methods or routed to field resources for resolution, monitor all Severity problems, offer coordination and management assistance for problems handled by remote IBM support, and provide an escalation path as needed.

For all Severity problems related to Eligible Products that are not covered by CTS, IBM will route the reported problem to the appropriate resources to provide support under separate terms and provide an escalation path as needed.

2.4 Proactive Support

The TSM and PST will, during Prime Shift (8:00 a.m. to 5:00 p.m. in the local time zone where Client receives Service, Monday through Friday, excluding holidays), perform proactive support activities to assist Client to manage the supported IT environment, and establish and maintain a framework for technical communications and activity reporting.

The TSM will:

- a. remotely conduct the initial Welcome Call as described in section 2.1, and provide information related to the Proactive Services of CTS;
- b. provide Client Primary Technical Contact (PTC) with a detailed questionnaire to be completed and returned to the TSM, to enable the TSM to create and deliver the Technical Support Plan (TSP) to the PTC within 30 days of the Welcome Call. The TSP will:
 - 1) summarize the CTS Service;
 - 2) document and maintain the inventory listing of Eligible Products;
 - 3) document the Client's operational and maintenance processes, current support structure, critical applications, critical outage scenarios, and environment; and
 - 4) as applicable, provide:
 - a) details and schedule initial setup of the CTS tools;
 - b) instructions to obtain the Performance Management for Power Systems Summary Report; and
 - c) instructions to register for and obtain Alert reports providing maintenance details for AIX and IBM i Operating Systems.
- c. update the TSP as needed, but at least annually;
- d. if applicable, verify that remote support electronic connections to the environment are functioning, and that the IBM Tools are available for use as documented in the TSP;
- e. create a monthly CTS review package, including delivery of Reports in Section 6, as applicable; and
- f. schedule quarterly Status Calls with PTC to review monthly documentation, review tools output, provide advice on recommended practices for managing and maintaining Client's Eligible Products, and document any planned changes.

2.5 CTS Customization

Customization of CTS is based on options selected by Client and may include the following or other Services mutually agreed to as listed on the Schedule:

- a. CTS Plus Monthly, CTS Plus Twice Per Month, or CTS Plus Weekly:
 - 1) Status Call frequency will be monthly or weekly, according to option selected by Client;
 - 2) annual one day on-site review;
 - 3) 15-minute Response Time for Client's problem submissions reported via the CTS DAC during Prime Shift;
 - 4) 30-minute Response Time for all Severity electronic problems submitted by Client;
 - 5) document all hardware problems (DAC and non-DAC) actively worked by the CTS team;
 - 6) document a summary of all problems on middleware products reported via the DAC and routed to specialist support teams; and
 - 7) CTS coverage for all additional Licensed Program Products (LPPs) installed on eligible Power Systems servers;
- b. frequency of Status Calls and CTS review packages;
- c. on-site operational reviews;
- d. remote proactive reviews of IBM i Logical Partitions (LPARs) with a remote review Status Report provided via e-mail; and
- e. 15-minute Response Time for Prime Shift and 30-minute Response Time for Off Shift.

3. Client Responsibilities

Client agrees to:

- a. submit all requests using Client's DAC;
- b. identify and maintain a USA PTC, to whom IBM may direct general technical information and questions;
- c. maintain, for the duration of CTS, Basic Maintenance for Eligible Products, consistent with the CTS Service being purchased. Client must terminate CTS upon termination of prerequisite Basic Maintenance on Eligible Products; and

- d. be responsible for obtaining all necessary permissions to use, provide, store and process content in Services and grants IBM permission to do the same. Client's content may be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering. Client will not input or provide such content unless IBM has first agreed in writing to implement additional required security measures.

4. Termination

Client may terminate CTS on 60 days' written notice, after the initial contract year. Adjustment fees may apply.

5. IBM Tools

IBM may use pre-existing tools, owned or licensed by IBM, in the performance of the Services (IBM Tools). Client has no right to access, retain, copy, or use the IBM Tools and no Client license or intellectual property right is granted or implied by the use of the IBM Tools installed on Client's Eligible Machines or at Client's facilities. IBM Tools are not warranted. Upon completion of the Service, Client agrees to remove the IBM Tools from Client's Eligible Machines and facilities.

6. Project Materials, Existing Works

IBM will deliver, or make available for download by Client, the following Project Materials, as applicable:

- a. downloadable Performance Management for Power Systems Summary Report
- b. optional downloadable Performance Management for Power Systems Detailed Report
- c. Alert Reports (available only for AIX and IBM i Operating Systems, delivered electronically).

Client will own the copyright in Project Materials that IBM develops for Client under this Statement of Work (SOW). Project Materials exclude works of authorship delivered to Client, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). IBM grants Client an irrevocable (subject to Client's payment obligations), nonexclusive, worldwide license to use, execute, reproduce, display, perform and prepare derivatives of Existing Works. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

IBM will deliver the following Existing Works:

- d. CTS Environment Questionnaire;
- e. Technical Support Plan (TSP); and
- f. Service Activity Report summarizing service activity related to reported problems, including proactive recommendations.

For System i only, IBM will deliver the following Existing Works:

- g. Maintenance Level Report; and
- h. optional Remote Review Status Report.

IBM's Data Processing Addendum (DPA) at <http://ibm.com/dpa> and the DPA Exhibit at <https://www.ibm.com/mysupport/s/article/support-privacy> apply to the processing of Client's personal data by IBM on behalf of Client in order to provide IBM Services, if and to the extent i) the European General Data Protection Regulation (E/2016/679) (GDPR); or ii) other data protection laws identified at <http://ibm.com/dpa/dpl> apply.

This Statement of Work, its applicable Transaction Documents, applicable Attachments, and the Agreement in effect between us are the complete agreement regarding Services and replace any prior oral or written communications between us. Accordingly, neither party is relying upon any representation that is not specified in the complete agreement including, without limitation, any representations concerning 1) levels of service, hours, or charges to provide any Service; 2) the experiences of other clients; or 3) results or savings Client may achieve. Each party accepts the terms of this Statement of Work by signing this Statement of Work by hand or, where recognized by law, electronically.



Statement of Work for ServiceElite

Proactive Support Service

Proactive Support Service (Proactive Support or Service) is optional with standard base hardware and software support services (Basic Maintenance) for Eligible Products.

1. Scope of Service

There are four Enhanced Service Modules in Proactive Support -- Priority Access, Priority Response, Priority Handling, and Proactive Support -- to provide premium remote voice and electronic entry into, and handling within, IBM's support structure to assist Client with managing and maintaining its Information Technology (IT) environment.

With the exception of the x86 server environment, IBM 24x7 Basic Maintenance (if available) is a prerequisite for each Eligible Product for which Client selects Proactive Support coverage. Basic Maintenance is recommended for x86 server environments, not required. Basic Maintenance for software is required for x86 server environments. If 24x7 all Severity coverage is not available under Basic Maintenance for a particular Product, the most comprehensive hours of coverage available must be selected. Eligible Products are identified at www.ibm.com/services/supline/products/

2. IBM Responsibilities

The Priority Support Team (PST) is the group of skilled Proactive Support specialists responsible for tasks in the following Enhanced Services Modules. IBM will assign a named member of the PST as Client's Technical Solution Manager (TSM). Members of the PST also assist the TSM with the provision of all aspects of Proactive Support.

2.1 Priority Access

IBM provides direct priority access to a team of skilled resources as an initial point of contact for problem submissions on Eligible Products. The TSM will, during the Welcome Call, provide Client with a unique Proactive Support Direct Access Code (DAC), and ensure that Client is able to maximize the features of Proactive Support.

Client may submit problems via voice using Client's unique DAC or by electronic problem reporting using the IBM support portal. If reporting problems electronically, Client must utilize procedures provided by the TSM to ensure Priority Access engagement.

2.2 Priority Response

Response Time is the elapsed time between IBM technical support's receipt of Client's problem submission and IBM's acknowledgment of the submission. The PST uses reasonable efforts to respond within the Targeted Response Time Objectives, based on the Severity of the problem and the time that Client reports the problem. IBM's initial response may resolve the problem or form the basis for determining if additional actions are required. Response Times are objectives only. IBM is not responsible for delays caused by systems and network problems.

Targeted Response Time Objectives

[For United States \(USA\) Telephone Assistance: all Severity and all shift response time objective is 30 minutes.](#)

For Electronic Assistance: all Severity and all shift response time objective is 60 minutes.

2.3 Priority Handling

The PST performs initial problem determination, problem source identification, and direct resolution, if possible. If additional resources are required for resolution, the PST will, based on the identified source and severity of the problem:

- For all Severity Eligible Program (software) problems, engage the appropriate support resources, coordinate and manage the contributions of those resources, monitor the progress of Client problem submissions, and provide regular status updates.
- For all Severity Hardware problems reported via the Proactive Support DAC, engage the appropriate support resources; offer coordination and management assistance for problems being handled by remote IBM support; and provide an escalation path as needed.
- For all Severity Hardware problems reported via non-Proactive Support DAC methods, or routed to field resources for resolution, monitor all Severity problems; offer coordination and management assistance for problems handled by remote IBM support; and provide an escalation path as needed.
- For all Severity problems related to Eligible Products that are not covered by Proactive Support, IBM will route the reported problem to the appropriate resources to provide support under separate terms, and provide an escalation path as needed.

2.4 Proactive Support

The TSM and PST will, during Prime Shift (8:00 a.m. to 5:00 p.m. in the local time zone where Client receives Service, Monday through Friday, excluding holidays), perform proactive support activities to assist Client to manage the supported IT environment, and establish and maintain a framework for technical communications and activity reporting.

The TSM will:

- g. remotely conduct the initial Welcome Call as described in section 2.1, and provide information related to the Proactive Support;
- h. provide Client's Primary Technical Contact (PTC) with a detailed questionnaire to be completed and returned to the TSM, to enable the TSM to create and deliver the Technical Support Plan (TSP) to the PTC within 30 days of the Welcome Call. The TSP will:
 - 1) summarize the Proactive Support Service;
 - 2) document and maintain the inventory listing of Eligible Products;
 - 3) document the Client's operational and maintenance processes, current support structure, critical applications, critical outage scenarios, and environment; and
 - 4) as applicable:
 - d) schedule initial setup of the Proactive Support tools and provide tool details;
 - e) provide instructions to obtain the Performance Management for Power Systems Summary Report; and
 - f) provide instructions to register for and obtain Alert reports providing maintenance details for AIX and IBM i Operating Systems.
- i. update the TSP as needed, but at least annually;
- j. if applicable, verify that remote support electronic connections to the environment are functioning, and that the IBM Tools are available for use as documented in the TSP;
- k. create a monthly Proactive Support review package, including delivery of Reports in Section 6, as applicable; and
- l. schedule quarterly Status Calls with PTC to review monthly documentation, review tools output, provide advice on recommended practices for managing and maintaining Client's Eligible Products, and document any planned changes.

2.5 Proactive Support Customization

Customization of Proactive Support is based on options selected by Client and may include the following or other Services mutually agreed to as listed on the Schedule:

- b. Proactive Support Plus Monthly, Proactive Support Plus Twice Per Month, or Proactive Support Plus Weekly:
 - 8) Status Call frequency will be monthly or weekly, according to option selected by Client;
 - 9) annual one day on-site review;
 - 10) 15-minute Response Time for Client's problem submissions reported via the Proactive Support DAC during Prime Shift;
 - 11) 30-minute Response Time for all Severity electronic problems submitted by Client;
 - 12) document all hardware problems (DAC and non-DAC) actively worked by the Proactive Support team; and
 - 13) document a summary of all problems on middleware products reported via the DAC and routed to specialist support teams.
- g. frequency of Status Calls and Proactive Support review packages;
- h. on-site operational reviews;
- i. remote proactive reviews of IBM i Logical Partitions (LPARs) with a remote review Status Report provided via e-mail; and
- j. 15-minute Response Time for Prime Shift and 30-minute Response Time for Off Shift.

3. Client Responsibilities

Client agrees to:

- e. submit all requests using Client's DAC;
- f. identify and maintain a United States (USA) PTC, to whom IBM may direct general technical information and questions;
- g. maintain, for the duration of Proactive Support, Basic Maintenance for Eligible Products, consistent with the Proactive Support being purchased. Client must terminate Proactive Support upon termination of prerequisite Basic Maintenance on Eligible Products; and
- h. be responsible for obtaining all necessary permissions to use, provide, store and process content in Services and grants IBM permission to do the same. Client's content may be subject to governmental regulation or may require

security measures beyond those specified by IBM for an offering. Client will not input or provide such content unless IBM has first agreed in writing to implement additional required security measures.

4. Termination

Client may terminate Proactive Support on 60 days' written notice, after the initial contract year. Adjustment fees may apply.

5. IBM Tools

IBM may use pre-existing tools, owned or licensed by IBM, in the performance of the Services (IBM Tools). Client has no right to access, retain, copy, or use the IBM Tools and no Client license or intellectual property right is granted or implied by the use of the IBM Tools installed on Client's Eligible Machines or at Client's facilities. IBM Tools are not warranted. Upon completion of the Service, Client agrees to remove the IBM Tools from Client's Eligible Machines and facilities.

6. Reports

IBM will deliver, or make available for download by Client, the following Project Materials, as applicable:

- i. downloadable Performance Management for Power Systems Summary Report;
- j. optional downloadable Performance Management for Power Systems Detailed Report; and
- k. Alert Reports (available only for AIX and IBM i Operating Systems, delivered electronically).

Client will own the copyright in Project Materials that IBM develops for Client under this Statement of Work (SOW). Project Materials exclude works of authorship delivered to Client, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). IBM grants Client an irrevocable (subject to Client's payment obligations), nonexclusive, worldwide license to use, execute, reproduce, display, perform and prepare derivatives of Existing Works. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

IBM will deliver the following Existing Works:

- l. Proactive Support Environment Questionnaire;
- m. Technical Support Plan (TSP); and
- n. Service Activity Report summarizing service activity related to reported problems, including proactive recommendations.

For System i only, IBM will deliver the following Existing Works:

- o. Maintenance Level Report; and
- p. optional Remote Review Status Report.

IBM's Data Processing Addendum (DPA) at <http://ibm.com/dpa> and the DPA Exhibit at <https://www.ibm.com/mysupport/s/article/support-privacy> apply to the processing of Client's personal data by IBM on behalf of Client in order to provide IBM Services, if and to the extent i) the European General Data Protection Regulation (E/2016/679) (GDPR); or ii) other data protection laws identified at <http://ibm.com/dpa/dpl> apply.

This Statement of Work, its applicable Transaction Documents, applicable Attachments, and the Agreement in effect between us are the complete agreement regarding Services and replace any prior oral or written communications between us. Accordingly, neither party is relying upon any representation that is not specified in the complete agreement including, without limitation, any representations concerning 1) levels of service, hours, or charges to provide any Service; 2) the experiences of other clients; or 3) results or savings Client may achieve. Each party accepts the terms of this Statement of Work by signing this Statement of Work by hand or, where recognized by law, electronically.



Statement of Work for ServiceElite

Both of us agree to add the following Services as part of our ServiceElite contract.

Machine Control Program Remote Support

This remote support Service is provided only for Machine Control Programs. The term "Machine Control Program" ("MCP") means code delivered with an IBM Machine that executes below the external user interface (i.e., is implemented in a part of storage that is not addressable by user programs).

IBM will provide you remote assistance (via telephone from IBM's support center or via electronic access) in response to your routine installation, configuration, and usage (how-to) questions pertaining to MCPs on your covered IBM Machines. This assistance is provided during normal business hours (8 a.m. to 5 p.m. in the local time zone where you receive the Service, Monday through Friday, excluding national holidays). For an additional charge,* you may upgrade your Service hours of coverage to 24 x 7.

Remote Support does not include assistance for 1) the design and development of code, 2) your use of a MCP in other than its specified operating environment, 3) use on other than the specified machine, or 4) failures caused by products for which IBM is not responsible under this Service. This Service does not include on-site assistance at your location.

IBM's Data Processing Addendum (DPA) at <http://ibm.com/dpa> and the DPA Exhibit at <https://www.ibm.com/mysupport/s/article/support-privacy> apply to the processing of Client's personal data by IBM on behalf of Client in order to provide IBM Services, if and to the extent i) the European General Data Protection Regulation (E/2016/679) (GDPR); or ii) other data protection laws identified at <http://ibm.com/dpa/dpl> apply.

This Statement of Work, its applicable Transaction Documents, applicable Attachments, and the Agreement in effect between us are the complete agreement regarding Services and replace any prior oral or written communications between us. Accordingly, neither party is relying upon any representation that is not specified in the complete agreement including, without limitation, any representations concerning 1) levels of service, hours, or charges to provide any Service; 2) the experiences of other clients; or 3) results or savings Client may achieve. Each party accepts the terms of this Statement of Work by signing this Statement of Work by hand or, where recognized by law, electronically.

Agreement for Power Systems Temporary Capacity on Demand

This IBM Agreement for Power Systems Temporary Capacity on Demand (“Agreement”), along with each IBM Supplement for Power Systems Temporary Capacity on Demand (“Supplement”) that is executed by Client, governs Client’s use of the IBM Power Systems Elastic Capacity on Demand (formerly the IBM Power Systems On/Off Capacity on Demand) offering (“Offering”).

1. Definitions

Activate – to enable On-Demand Capacity for use.

Monitoring Program -- software IBM licenses to Client (for example, the IBM Electronic Service Agent Program) that (i) monitors Activation of Temporary Capacity, and (ii) reports TCoD Units to IBM through a telecommunications connection.

On-Demand Capacity – the amount of resources, such as processors, storage, memory, that is installed on a TCoD Machine but that is not enabled for use (for example, resources which IBM documentation refers to as “on-demand processors”).

Requested Units -- TCoD Units Client specifies when Client Activates On-Demand Capacity.

TCoD Billing Feature -- a feature, used for billing purposes, that specifies the price for each TCoD Unit. The TCoD Billing Feature is orderable in the quantity and type of TCoD Units that are Activated during a TCoD Billing Quarter.

TCoD Billing Quarter -- a calendar quarter for which Client’s Activation of Temporary Capacity is monitored for billing purposes.

TCoD Enablement Feature – a feature which, when included in the configuration of a TCoD Machine, (i) authorizes Client to perform Activations and use Temporary Capacity on the TCoD Machine, and (ii) provides a key (referred to in IBM documentation as the “TCoD Enablement Code”) to enable Client Activation and Client management of Temporary Capacity on the TCoD Machine.

TCoD Machine -- an IBM Power Systems Machine that supports Temporary Capacity on Demand (“TCoD”) (which may also be referred to in IBM literature or otherwise known as “Elastic Capacity on Demand”, “Elastic CoD”, “On/Off Capacity on Demand”, “On/Off CoD”, “On/Off Capacity Upgrade on Demand,” or “On/Off CUoD”) and for which IBM offers TCoD features. Each TCoD Machine is specified in a Supplement.

TCoD Unit Maximum -- a TCoD Enablement Feature’s maximum number of TCoD Units available for Activation. Once this maximum is reached, Client must obtain a new TCoD Enablement Feature in order to perform additional Activations.

TCoD Units -- the duration and amount of On-Demand Capacity that is Activated. For example, “Processor Days” (number of Activated processors multiplied by the number of 24-hour periods plus any partial 24-hour period), or “Memory Days” (the amount of Activated memory multiplied by the number of 24-hour periods plus any partial 24-hour period) are the TCoD Units measuring Activation of processors and memory, respectively. TCoD Units include both Requested Units and Unreturned Units.

Temporary Capacity – On-Demand Capacity that has been Activated.

Unreturned Units -- TCoD Units that remain Activated after expiration of the duration Client specified when Client Activated On-Demand Capacity.

2. Applicable TCoD Machines

Each Machine specified in a Supplement is a TCoD Machine under terms of this Agreement.

3. Use of Temporary Capacity

Client agrees to the following:

- a. Client is responsible for the charges associated with each TCoD Unit measured on Client’s TCoD Machine during a TCoD Billing Quarter. This responsibility is satisfied when Client orders a sufficient quantity of TCoD Billing Features and pays IBM or Client’s IBM Business Partner, as applicable, for the TCoD Billing Features. The amount due will be at IBM’s or Client’s IBM Business Partner’s, as applicable, then-current prices and payment terms for the TCoD Billing Feature

applicable to the associated TCoD Billing Quarter.

b. no later than 30 days following the end of each TCoD Billing Quarter, Client will place, or Client will have Client's IBM Business Partner place on Client's behalf, an order with IBM for TCoD Billing Features in a quantity equal to all TCoD Units that were measured on Client's TCoD Machine during that TCoD Billing Quarter. Client authorizes IBM to place this order on Client's behalf, and invoice Client for the order at IBM's then current price, if Client or Client's IBM Business Partner fails to place such order within such time period;

c. Client will install (unless preinstalled), configure, and maintain the Monitoring Program on each TCoD Machine in the manner specified by IBM in the Monitoring Program's documentation, for the purpose of reporting TCoD Units to IBM at the interval(s) determined solely by IBM;

d. if Client becomes aware that the Monitoring Program is disabled, disconnected or otherwise unable to accurately report TCoD Units to IBM, Client will promptly notify IBM, and allow IBM (or IBM's agent) to access the TCoD Machine for the sole purpose of determining, if possible, the measurement of TCoD Units for which Client is responsible;

e. if (a) Client removes, disables, disconnects, or otherwise prevents the Monitoring Program from accurately reporting TCoD Units to IBM; or (b) the Monitoring Program becomes disabled, disconnected or otherwise unable to accurately report TCoD Units to IBM and Client fails to promptly notify IBM and allow access as described in Section 3.d above, then Client will be responsible for TCoD Units as if all of the associated TCoD Machine's available On-Demand Capacity was Activated during the entire period for which the Monitoring Program did not measure or report TCoD Units to IBM. IBM retains all other remedies it may have in the event of such actions, including without limitation termination of Client's right to use Temporary Capacity; and

f. upon reasonable notice, during normal business hours, and in a manner that minimizes disruption to Client's business, Client agrees to grant IBM sufficient access to TCoD Machines, including without limitation information regarding the use of IBM Programs on TCoD Machines, for the sole purpose of verifying Client's compliance with the terms of this Agreement and IBM Program license terms.

4. Client's Additional Responsibilities

Client agrees to the following:

a. Client represents and warrants that, at the time a TCoD Enablement Feature is ordered with, or for, a TCoD Machine, Client is either the owner of the TCoD Machine or Client has the permission from the owner and any lien holders for placing such order and Activating On-Demand Capacity;

b. IBM is not responsible to notify any of Client's suppliers (for example, other software vendors who license their product on a per-processor basis) when Client Activates On-Demand Capacity;

c. in addition to charges for Activation of On-Demand Capacity, Client is also responsible for any charges resulting from, or necessary for, the Activation, including those for requisite hardware, software, (for example, software license upgrades) or services (for example, additional maintenance charges);

d. IBM reserves the right to change the process by which Temporary Capacity is made available for Client's use. Client will install (or if specified by IBM, allow IBM to install) and implement any such change on each applicable TCoD Machine within a commercially reasonable time period following receipt of notice from IBM or Client's IBM Business Partner;

e. IBM reserves the right to change the Monitoring Program or the means by which IBM monitors Activation of On-Demand Capacity. Client will install (or if specified by IBM, allow IBM to install) and implement any such change within a commercially reasonable time period following receipt of notice from IBM or Client's IBM Business Partner;

f. this offering is comprised solely of the computer resource identified as On-Demand Capacity available for a TCoD Machine. Client is responsible for providing all other computing resources (for example, memory, storage) that Client may require, adequate in type and quantity, to satisfy the needs of Client's computing environment;

g. Client authorizes IBM and its subsidiaries (and their successors and assigns, contractors, and IBM Business Partners) to store and use Client's business contact information wherever they do business in connection with IBM Products and Services or in furtherance of IBM's business relationship with Client; and

h. prior to termination of this Agreement, Client will provide IBM access to each TCoD Machine for IBM's removal of the TCoD Enablement Feature. If Client transfers possession of a TCoD Machine without providing IBM such access, Client is, upon such transfer, responsible to IBM for the following charges associated with the transferred TCoD Machine: (1) unreported TCoD Units for Activated On-Demand Capacity, up to the TCoD Unit Maximum; and (2) any Unreturned Units, in excess of the TCoD Unit Maximum.

5. Termination

Client may terminate this Agreement by providing written notice to IBM. Such termination is effective the later of i) the date of termination Client specifies in such notice or ii) the date IBM completes the removal of the TCoD Enablement Feature from each TCoD Machine, such removal to be performed at a mutually agreed upon time.

Client's rights under this Agreement for a TCoD Machine terminate upon the earliest of the following: i) Client transfers possession or control of the TCoD Machine to another party (for example, Client returns the TCoD Machine to a lessor); ii) this Agreement terminates.

Either party may terminate this Agreement if the other fails to comply with any of its terms, provided the one who is not complying is given written notice and reasonable time, not to exceed 30 days, to comply.

This Agreement terminates upon the filing of any petition or proceeding by or against Client under any bankruptcy or insolvency law.

Any terms of this Agreement which by their nature extend beyond termination remain in effect until fulfilled, and apply to both of our respective successors and assignees.

6. Warranty

Standard IBM warranty terms apply. As such, the warranty period for On-Demand Capacity commences upon the Date of Installation of the On-Demand Capacity, regardless of when or whether Client Activates the On-Demand Capacity.

7. Machine Code

Client's use of Machine Code on a TCoD Machine is subject to the terms and restrictions governing such use as specified in the Machine Code license (available from IBM upon request). Client's use of Temporary Capacity is governed by the terms and restrictions that govern Machine Code except as expressly provided in this Agreement. Machine Code does not include any Program or code provided under a separate license agreement, including without limitation an open source license agreement.

7.1 Temporary License

For the purpose of an Activation, IBM grants Client a temporary license to use the Machine Code on the TCoD Machine to support Client's use of Temporary Capacity, as authorized herein. Client's temporary license to use the Machine Code on a TCoD Machine will commence on the date Client performs the Activation and will terminate upon the earlier of the following: i) Client's Deactivation of the Temporary Capacity, and ii) expiration or termination of Client's rights under this Agreement for the TCoD Machine.

8. Designation of Participating Business Partner

TCoD Billing Features are offered by IBM directly and by participating IBM Business Partners. To participate, an authorized IBM Business Partner must register with IBM and agree to the IBM terms of participation. If Client has chosen to order TCoD Billing Features through a participating IBM Business Partner, Client authorizes IBM to provide the information that IBM receives through the Monitoring Program to such IBM Business Partner each Billing Quarter to allow such IBM Business Partner to invoice Client for applicable charges. Client agrees that unless Client revokes such authorization or designates a different participating IBM Business Partner with at least 60 days' notice to IBM (in the manner specified by IBM, such specification being available from IBM upon Client's request) Client

continues to authorize IBM to provide this information to the designated participating IBM Business Partner. In the event Client revokes authorization without designating another participating IBM Business Partner, IBM will invoice Client directly for applicable charges.

9. General

- a. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.
- b. To the extent permissible under applicable law, the parties' consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing. The parties agree that an identification code (called a "user ID") contained in an electronic writing between the parties is sufficient to verify the sender's identity and the document's authenticity.
- c. IBM reserves the right to change the process through which Utility CoD usage information is reported to IBM, or through which Keys are provided by IBM. Client agrees to implement any such change for each Eligible Machine.
- d. Client authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use Client's business contact information wherever they do business, in connection with IBM products and services or in furtherance of IBM's business relationship with Client.
- e. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.
- f. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
- g. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to do so is void. Neither of us will unreasonably withhold such consent. The assignment of this Agreement within the legal entity of which either of us is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments under this Agreement without obtaining Client's consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that affects all of its similarly situated Clients.
- h. Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, (i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than four years after the cause of action arose; and (ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse.
- i. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Client except as permitted by the Limitation of Liability terms incorporated herein under Section 10 for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- j. The rights, duties, and obligations of each party are valid only in the country in which Offering transactions are performed, except that all licenses are valid as specifically granted.
- k. Once this Agreement is accepted by both parties, any reproduction of the Agreement made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original.

10. Incorporated Terms

If an IBM Customer Agreement (or an equivalent master agreement) is in effect between Client and IBM ("ICA"), the terms of this Agreement are incorporated by reference into the ICA. If no ICA is in effect

between Client and IBM, the terms regarding Limitation of Liability, Governing Law, and Jurisdiction found in the TCoD Machine's IBM Statement of Limited Warranty, available at http://www.ibm.com/systems/support/machine_warranties. ("SOLW Terms") are incorporated by reference into this Agreement. To the extent there is a conflict between the terms of this Agreement and the ICA or the SOLW Terms, those of this Agreement prevail over the other agreements.

11. Complete Agreement

This Agreement and either the ICA or SOLW Terms, as applicable under terms of Section 10 above, are the complete agreement regarding the Offering and replace all prior oral or written communications, representations, undertakings, warranties, promises, covenants, and commitments between Client and IBM regarding the Offering. In entering into this Agreement, neither party is relying on any representation that is not specified in this Agreement. Additional or different terms in any written communication from Client (such as a purchase order) are void.

12. Data Privacy Protection

- a. IBM and its affiliates, and their contractors and subprocessors, may, wherever they do business, store and otherwise process business contact information (BCI) of Client, its personnel and authorized users, for example, name, business telephone, address, email and user ID for business dealings with them. Where notice to or consent by the individuals is required for such processing, Client will notify and obtain such consent. IBM may use personnel and resources in locations worldwide and third party suppliers to support the delivery of products and services.
- b. Account Data is information, other than Content and BCT, that Client provides to IBM to enable Client's acquisition or use of IBM Products or non-IBM Products or that IBM collects using tracking technologies, such as cookies and web beacons, regarding Client's acquisition or use of IBM Products or non-IBM Products. IBM and its affiliates, its contractors and subprocessors may use Account Data for example, to enable product features, administer use, personalize experience, and otherwise support or improve use of IBM Products and non-IBM Products. The IBM Online Privacy Statement at <https://www.ibm.com/privacy/details/us/en/> provides additional details.

Supplement for Power Systems Temporary Capacity on Demand

This IBM Supplement for Power Systems Temporary Capacity on Demand (“Supplement”), along with the IBM Agreement for Power Systems Temporary Capacity on Demand that has been executed by Client (“Agreement”), governs Client’s use of the IBM Power Systems Elastic Capacity on Demand (formerly the IBM Power Systems On/Off Capacity on Demand) offering (“Offering”).

1. Applicable TCoD Machines

Each Machine specified below is a TCoD Machine under terms of this Agreement.

Machine Type	Serial Number
9080-M9S	
9080-M9S	

2. Data Privacy Protection

a. IBM and its affiliates, and their contractors and subprocessors, may, wherever they do business, store and otherwise process business contact information (BCI) of Client, its personnel and authorized users, for example, name, business telephone, address, email, and user ID for business dealings with them. Where notice to or consent by the individuals is required for such processing, Client will notify and obtain such consent. IBM may use personnel and resources in locations worldwide and third party suppliers to support the delivery of products and services.

b. Account Data is information, other than Content and BCI, that Client provides to IBM to enable Client’s acquisition or use of IBM Products or non-IBM Products or that IBM collects using tracking technologies, such as cookies and web beacons, regarding Client’s acquisition or use of IBM Products or non-IBM Products. IBM and its affiliates, its contractors and subprocessors may use Account Data for example, to enable product features, administer use, personalize experience, and otherwise support or improve use of IBM Products and non-IBM Products. The IBM Online Privacy Statement at <https://www.ibm.com/privacy/details/us/en/> provides additional details.

Attachment 3

- International Passport Advantage Agreement

International Passport Advantage Agreement



Under this Agreement, Client may order Eligible Products (EPs) from IBM. Details regarding EPs are provided in Attachments, and Transaction Documents (TDs) such as Terms of Use, Service Descriptions, quotes, and Proofs of Entitlement (PoEs). This Agreement, Attachments, and applicable TDs are the complete agreement regarding transactions by which Client acquires EPs. Client Originating Company (also identified as the Originating Site in the Passport Advantage Enrollment Form) and the IBM Originating Company that accepts the Client Originating Company's orders agree to coordinate the administration of this Agreement within their respective Enterprises, which includes the set of legal entities that, by more than 50%, owns, are owned by, or are under common ownership with the Originating Company. The Client Originating Company is responsible for compliance with the terms for all Client sites assigned a Passport Advantage Site Number (Site(s)) under this Agreement. In the event of conflict, an Attachment prevails over this Agreement and a TD prevails over both the Agreement and any Attachment.

1. General

1.1 Acceptance of Terms

The Client Originating Company and thereafter each of its participating Enterprise companies accept this Agreement by submitting an IBM International Passport Advantage Enrollment Form to IBM or Client's chosen reseller(s). This Agreement is effective on the date IBM accepts the initial order under this Agreement (the Effective Date) and remains in effect until the Client Originating Company or the IBM Originating Company terminates it under this Agreement.

An EP is subject to this Agreement when IBM accepts Client's order by i) sending an invoice or a PoE including the level of authorized use, ii) making the Program or Cloud Service available, iii) shipping the Appliance, or iv) providing the support, service, or solution.

1.2 Changes to Agreement Terms

Because this Agreement may apply to many future orders, IBM reserves the right to modify it by providing Client at least three months' written notice. Changes are not retroactive; they apply, as of the effective date, only to new orders and renewals. Client accepts changes by placing new orders after the change effective date or allowing transactions to renew after receipt of the change notice. Except as otherwise provided in this Agreement, all changes must be in writing, signed by both parties.

1.3 Payment and Taxes

Client agrees to pay all applicable charges specified by IBM, charges for use in excess of authorizations, and any late payment fees. Charges are exclusive of any customs or other duty, tax, and similar levies imposed by any authority resulting from Client's acquisitions under the Agreement and will be invoiced in addition to such charges. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

If, as a result of Client moving, accessing, or using an EP across a border, any authority imposes a customs duty, tax, levy or fee (including withholding taxes for the import or export of any such EP), then Client agrees that it is responsible for, and will pay, any such customs duty, tax, levy or fee. This excludes those taxes based on IBM's net income.

Client agrees to: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents.

1.4 IBM Business Partners and Resellers

IBM Business Partners and resellers are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

1.5 Liability and Indemnity

IBM's entire liability for all claims related to this Agreement will not exceed any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the product or service that is the subject of the claim, regardless of the basis of the claim. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. These limitations apply collectively to IBM, its affiliates, contractors, subprocessors, and suppliers.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; and ii) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM EP acquired under this Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

IBM has no responsibility for claims based, in whole or part, on Non-IBM EPs, items not provided by IBM, or any violation of law or third party rights caused by Content, materials, designs, specifications, or use of a non-current version or release of an IBM Product when an infringement claim could have been avoided by using a current version or release. Each Non-IBM Program is governed by the terms of the third party end user license agreement that accompanies it. IBM is not a party to the third party end user license agreement and assumes no obligations under it.

1.6 General Principles

Parties will not disclose confidential information without a separate, signed confidentiality agreement. If confidential information is exchanged, the confidentiality agreement is incorporated into, and subject to, this Agreement.

IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party determines the assignment of its personnel and contractors, their direction, control, and compensation.

Content consists of all data, software, and information that Client or its authorized users provide, authorize access to, or inputs to an EP. Use of such EP will not affect Client's existing ownership or license rights in such Content. IBM and its contractors and subprocessors may access and use the Content solely for the purpose of providing and managing the EP, unless otherwise described in a TD.

Client is responsible for obtaining all necessary rights and permissions to enable, and grants such rights and permissions to, IBM and its contractors and subprocessors to use, provide, store, and process Content in any EP. This includes Client providing required information, making necessary disclosures and obtaining consent, if required, before providing individuals' information, including personal or other regulated information in such Content. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering, Client will not input, provide, or allow such Content unless IBM has first agreed in writing to implement additional required security measures. IBM's Data Processing Addendum at <https://www.ibm.com/terms> applies and supplements the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) applies to Content.

Client is responsible for arranging for and paying applicable charges to their selected suppliers of telecommunications, including internet connectivity associated with accessing Cloud Services, Appliance

Services, IBM Software Subscription and Support, and Select Support, unless IBM specifies otherwise in writing. IBM and its affiliates, and their contractors and subprocessors, may, wherever they do business, store and otherwise process business contact information (BCI) of Client, its personnel and authorized users, for example, name, business telephone, address, email, and user IDs, for business dealings with them. Where notice to or consent by the individuals is required for such processing, Client will notify and obtain such consent.

IBM may use personnel and resources in locations worldwide, including third party contractors and subprocessors to support the delivery of EPs. IBM may transfer Content, including personally identifiable information, across country borders. A list of countries where Content may be processed for a Cloud Service is available at <http://www.ibm.com/cloud/datacenters> or as described in a TD. IBM is responsible for the obligations under the Agreement even if IBM uses third party contractors or subprocessors unless otherwise set forth in a TD. IBM will require subprocessors with access to Content to maintain technical and organizational security measures that will enable IBM to meet its obligations for a Cloud Service. A current list of subprocessors and their roles will be provided upon request.

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. EPs are for use within Client's Enterprise only, and may not be assigned, resold, rented, leased, or transferred to third parties. Any attempt to do so is void. Lease-back financing of Appliances is permitted. Assignment of IBM rights to receive payments and by IBM in conjunction with the sale of the portion of IBM's business that includes the product or service is not restricted.

To the extent permissible under applicable law, the parties consent to use electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of this Agreement made by reliable means is considered an original. This Agreement supersedes any course of dealing, discussions or representations between the parties.

No right or cause of action for any third party is created by this Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to this Agreement more than four years after the cause of action arose. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld.

1.7 Governing Laws and Geographic Scope

Each party is responsible for complying with: i) laws and regulations applicable to its business and Content, and ii) import, export and economic sanction laws and regulations, including the defense trade control regime of any jurisdiction, including the International Traffic in Arms Regulations and those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Client is responsible for its use of EPs.

Both parties agree to the application of the laws of the country where the transaction is performed (or for services, the laws of the country of Client's business address) to this Agreement, without regard to conflict of law principles. The rights and obligations of each party are valid only in the country where the transaction is performed or, if IBM agrees, the country where the product is placed in productive use, except all licenses are valid as specifically granted. If Client or any user exports or imports Content or makes use of any portion of an EP outside the country of Client's business address, IBM will not serve as the exporter or importer. If any provision of this Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in this Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under this Agreement.

1.8 Agreement Termination

The Client Originating Company may terminate this Agreement without cause on one month's notice to the IBM Originating Company, and the IBM Originating Company may terminate this Agreement on three months' notice

to the Client Originating Company. Once terminated, no further EPs may be acquired by any participating Client Site under the Agreement.

If Client acquired or renewed IBM Software Subscription and Support, Selected Support, or Cloud Services, or if Client acquired or renewed a Program's license prior to the notice of termination, IBM may either continue to provide such services or allow Client to use the Program for the remainder of the current term(s), or give Client a prorated refund.

The Client Originating Company will be considered to have terminated this Agreement if neither it nor any of its participating Enterprise companies have placed orders for EPs for 24 consecutive months nor have Software Subscription and Support or Selected Support in effect.

Either of us may terminate this Agreement if the other does not comply with any of its terms, provided the one not complying is given written notice and reasonable time to comply.

Client agrees to promptly discontinue use of and destroy all of Client's copies of a Program upon termination of a license grant.

Any terms that by their nature extend beyond termination remain in effect until fulfilled, and apply to respective successors and assignees.

1.9 Eligible Products

IBM determines EPs, and assigns each EP a point value, which may be zero. IBM can add or withdraw EPs (including in CEO Product Categories), change an EP's SVPs, point values, or add or withdraw a license metric for an EP at any time. EPs may not be used to provide commercial hosting or other commercial information technology services to third parties.

For an EP, IBM may withdraw a Fixed Term License, Monthly License (ML), IBM Software Subscription and Support, or Selected Support, or a Cloud Service or an Appliance Service in its entirety, on 12 months' written notice to all then current Clients by published announcement, letter, or e-mail. Client understands that as of the effective date of such withdrawal, Client may not increase its level of use beyond the authorizations already acquired without IBM's written consent, renew or purchase that offering; and if Client renewed the offering prior to the notice of withdrawal, IBM may either (a) continue to provide that offering until the end of the then current term or (b) provide a prorated refund.

1.10 Renewal

The term for a Fixed Term License, Token License, IBM Software Subscription and Support, Selected Support or Appliance Services automatically renews at then current charges, unless Client provides written notice of termination prior to expiration of the term.

IBM may pro-rate charges for IBM Software Subscription and Support, Selected Support, Fixed Term Licenses of six months or more, and Appliance Services to align with Client's Passport Advantage Agreement Anniversary.

To reinstate any expired Software Subscription and Support coverage, Selected Support, a Fixed Term License or Appliance Services, Client may not renew and must acquire Software Subscription and Support Reinstatement, Selected Support Reinstatement, Appliance Services Reinstatement or a new initial Fixed Term License.

For an ML, Client selects a renewal option at the time of order. At each renewal of an ML Commitment Term, IBM may change the charges applicable to the renewed Commitment Term and Client agrees to pay then-current charges as specified in a TD or in a renewal quote made available to Client no less than 60 days prior to the expiration of the then current term. Client may change their selected renewal option for a Commitment Term by giving IBM notice in writing no less than 30 days before the end of that Commitment Term.

For a Cloud Service, Client selects a renewal option at the time of order.

1.11 Relationship Suggested Volume Price (RSVP) Level and Suggested Volume Pricing (SVP)

An RSVP level is determined by aggregating points for all EPs ordered during Client's Term (described below). The point value of Client's initial EP order determines Client's initial RSVP level. Client may attain a higher RSVP Level by placing additional EP orders. The higher RSVP level will apply to orders placed after the higher RSVP level is attained. An SVP level is also calculated for each order, and is based on the point value for that order. If the SVP level for a particular order is higher than Client's current RSVP level, the SVP level will apply to that order.

The initial Term commences with Client's first order after enrollment and continues until the last day of the twelfth full month thereafter (i.e., the initial PA term includes 12 full months, plus if the order was not placed on the first day of a month, the remainder of the first month). On the first day of the month following the end of the prior Term (the Anniversary), the next 12-month Term begins. For each Term after the initial Term, Client's RSVP Level is reset on the Anniversary, based on EPs acquired by all participating Client Sites during the prior Term. The RSVP Level for a new Term will not be lowered by more than one level below Client's RSVP level at the end of the prior Term.

RSVP/SVP Level Table:

RSVP/SVP Level	BL	D	E	F	G	H
Points	<500	500	1,000	2,500	5,000	10,000

1.12 Compliance Verification

Client agrees to create, retain, and provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Client's use of all EPs is in compliance with this Agreement including the licensing and pricing qualification terms referenced in this Agreement (Passport Advantage Terms). Client is responsible for 1) ensuring that it does not exceed its authorized use, and 2) remaining in compliance with Passport Advantage Terms.

Upon reasonable notice, IBM may verify Client's compliance with Passport Advantage Terms at all Sites and for all environments in which Client uses (for any purpose) EPs subject to Passport Advantage Terms. Such verification will be conducted in a manner that minimizes disruption to Client's business, and may be conducted on Client's premises, during normal business hours. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

Client agrees that, upon written notice from IBM and the independent auditor, any confidential information provided to the independent auditor or to IBM through the independent auditor, as reasonably required for compliance verification, shall be provided, and Client consents to the exchange of such information, pursuant to the terms of the IBM Agreement for the Exchange of Confidential Information (AECI) or such other general confidentiality agreement in place between Client and IBM, unless Client and the independent auditor agree, in writing, to the use of an alternate confidentiality agreement within 60 days of a request for verification information.

IBM will notify Client in writing if any such verification indicates that Client has used any EPs in excess of its authorized use or is otherwise not in compliance with Passport Advantage Terms. Client agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for 1) any such excess use, 2) IBM Software Subscription and Support and Selected Support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

1.13 Programs in a Virtualization Environment (Sub-Capacity Licensing Terms)

EPs that meet the operating system, processor technology, and virtualization environment requirements for Sub-Capacity usage may be licensed under Sub-Capacity Licensing terms (an Eligible Sub-Capacity Product); see <https://www.ibm.com/software/passportadvantage/subcaplicensing.html>. Product deployments that cannot meet Sub-Capacity Licensing requirements must be licensed using Full Capacity terms.

PVU-based licenses for Eligible Sub-Capacity Products must be acquired for the total number of Processor Value Units (PVUs) associated with the virtualization capacity available to the Eligible Sub-Capacity Product as measured at <https://www.ibm.com/software/howtobuy/passportadvantage/valueunitcalculator/vucalc.wss>.

Prior to an increase in an Eligible Sub-Capacity Product's virtualization capacity, Client must first acquire sufficient licenses, including IBM Software Subscription and Support, if applicable, to cover that increase.

If at any time IBM becomes aware of circumstances indicating that Client is not operating all or a portion of Client's environment in accordance with applicable Sub-Capacity Licensing requirements, IBM may declare Client's Enterprise, or any applicable portion of Client's Enterprise, ineligible for Sub-Capacity Licensing and will provide Client with notice of any such determination. Client shall have 30 days to provide IBM information sufficient for IBM to determine that Client is in full compliance with the applicable Sub-Capacity Licensing requirements, in which case IBM shall withdraw its determination of ineligibility. Otherwise, Client agrees to acquire sufficient additional licenses and IBM Software Subscription and Support entitlements necessary for full capacity usage within the identified Client environment at then current prices.

1.14 Client's Reporting Responsibilities

For Sub-Capacity usage of EPs, Client agrees to install and configure the most current version of IBM's license metric tool (ILMT) within 90 days of Client's first Sub-Capacity-based Eligible Sub-Capacity Product deployment, to promptly install any updates to ILMT that are made available, and to collect deployment data for each such EP. Exceptions to this requirement are i) when ILMT does not yet provide support for the Eligible Virtualization Environment or Eligible Sub-Capacity Product, ii) if Client's Enterprise has fewer than 1,000 employees and contractors, Client is not a Service Provider (an entity that provides information technology services for end user customers, either directly or through a reseller), and Client has not contracted with a Service Provider to manage Client's environment in which EPs are deployed, and the total physical capacity of Client's Enterprise servers measured on a full capacity basis, but licensed under Sub-Capacity Licensing terms, is less than 1,000 PVUs, or iii) when Client's servers are licensed to full capacity.

For all instances where ILMT is not used, and for all non PVU-based licenses, Client is required to manually manage and track Client's licenses as described in the Compliance Verification section above.

For all PVU-based EP licenses, reports must contain the information in the example Audit Report available at <https://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>. Reports (generated by ILMT or manual if Client meets manual reporting exemptions) must be prepared at least once per quarter and retained for a period of not less than 2 years. Failure to generate Reports or provide Reports to IBM will cause charging under full capacity for the total number of physical processor cores activated and available for use on the server.

Client will promptly install new versions, releases, modifications, or code corrections ("fixes") of the ILMT that IBM makes available. Client will subscribe to the IBM Support notifications via <https://www.ibm.com/support/mynotifications> in order to be notified when such fixes become available.

Client will not alter, modify, omit, delete, or misrepresent by any means, directly or indirectly, i) the ILMT audit records, ii) the ILMT Program, or iii) Audit Reports that Client submits to IBM or to an independent auditor. The foregoing does not apply to changes, modifications or updates to ILMT expressly provided by IBM, including through notifications.

Client will assign a person in Client's organization with authority to manage and promptly resolve questions on Audit Reports or inconsistencies between report contents, license entitlement, or ILMT configuration; and promptly place an order with IBM or Client's IBM reseller if reports reflect EP use over Client's authorized level. IBM Software Subscription and Support and Selected Support coverage will be charged as of the date Client exceeded Client's authorized level.

2. Warranties

Unless IBM specifies otherwise, the following warranties apply only in the country of acquisition. The warranty for an IBM Program is stated in its license agreement.

IBM warrants it provides IBM Software Subscription and Support, Selected Support, Cloud Services, and Appliance Services using commercially reasonable care and skill as described in this Agreement, Attachment, and TD. These warranties end when such support or service ends.

IBM warrants that an IBM Machine Component of an Appliance used in its specified operating environment conforms to its official published specifications. The warranty period for an IBM Machine Component of an Appliance is a fixed period commencing on its date of installation (also called "Warranty Start Date") specified in a TD. If an IBM Machine Component of an Appliance does not function as warranted during the warranty period and IBM is unable to either i) make it do so, or ii) replace it with one that is at least functionally equivalent, Client may return it to the party from whom Client acquired it for a refund.

IBM does not warrant uninterrupted or error-free operation of an EP or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access to an EP. These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated in an Attachment or TD. Unless otherwise specified in an Attachment or TD, IBM offers Non-IBM EPs without warranties of any kind. Third parties provide services and licensed products directly to Client under their own agreements. Third parties may provide their own warranties to Client. IBM will identify IBM EPs it does not warrant.

3. Programs and IBM Software Subscription and Support

IBM Programs acquired under this Agreement are subject to IBM's International Program License Agreement (IPLA), including License Information (LI) documents.

A Program may include the following, including the original and all whole or partial copies: 1) machine- readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.

With the exception of certain Programs that IBM designates as platform or operating system specific, Client may use and install Programs in any commercially available national language for any platform or operating system available from IBM up to the level of Client's authorizations.

To acquire additional authorizations to use Programs under this Agreement, Client must have already acquired the Program code.

3.1 Money-back Guarantee

The IPLA's "money-back guarantee" only applies the first time Client licenses the IBM Program under this Agreement or any other valid agreement. If an IBM Program license is for an initial fixed term subject to renewal or for an initial Commitment Term, Client may obtain a refund only if Client returns the Program and its PoE within the first 30 days of such initial term. The IPLA's "money-back guarantee" does not apply to Appliances or Cloud Services.

3.2 Conflict between this Agreement and the IPLA

If there is a conflict between the terms of this Agreement, including its Attachments and TDs, and those of the IPLA, including its LI, the terms of this Agreement prevail. The IPLA and its LIs are available on the Internet at <https://www.ibm.com/software/sla>.

3.3 IBM Trade-ups and Competitive Trade-ups

Licenses for certain Programs that replace qualifying IBM Programs or qualifying Non-IBM Programs may be acquired for a reduced charge. Client agrees to terminate Client's use of the replaced Programs when Client installs the replacement Programs.

3.4 Monthly Licenses

Monthly License Programs (ML Programs) are IBM Programs provided to Client for a monthly license charge. Monthly Licenses have a term that begins on the date that Client's order is accepted by IBM and continues for a period Client commits to pay IBM (a Commitment Term) as specified in the TD. Client may terminate a current Commitment Term before its end date by giving at least 30 days' written notice to IBM and will receive a prorated refund for any whole months of remaining prepaid term.

3.5 Fixed Term Licenses

Fixed Term Licenses have a term that begins on the date that Client's order is accepted by IBM; on the calendar day following the expiration of a prior Fixed Term; or on the Anniversary date. A Fixed Term License is for the definite time period specified by IBM in a TD. Client may terminate a current Fixed Term License before its end date by giving at least 30 days' written notice to IBM and will receive a prorated refund for any whole months of remaining prepaid term.

3.6 Token Licenses

EPs which are Eligible Token Products or ETPs are assigned a Token Value. As long as the total Tokens required for all ETPs used concurrently does not exceed the number of Tokens authorized in Client's PoE(s), Client may use Token(s) for a single ETP or for a combination of ETPs.

Prior to exceeding current Token authorizations or using an Eligible Token Product not authorized, Client must acquire sufficient additional Tokens and authorizations.

ETPs may contain a disabling device that will prevent them from being used after the end of the Fixed Term. Client agrees not to tamper with this disabling device and take precautions to avoid any loss of data.

3.7 CEO (Complete Enterprise Option) Product Categories

Collections of EPs may be offered by IBM on a per user basis subject to a minimum initial user quantity (a CEO Product Category). For Client's first (primary) CEO Product Category, Client must acquire licenses for all users in their Enterprise who have been assigned a machine capable of copying, using, or extending the use of any Program in the CEO Product Category. For each additional (secondary) CEO Product Category, Client must meet the applicable minimum initial order quantity requirement but is not required to acquire licenses for all users in their Enterprise who have been assigned a machine capable of copying, using, or extending the use of any Program in the CEO Product Category.

Any installs of any component of a CEO Product Category can only be made and used by or for users for whom licenses have been obtained. All client-side Programs (used on an end user device to access a Program on a server) must be acquired from the same CEO Product Category as the server Program they access.

3.8 IBM Software Subscription and Support

IBM provides IBM Software Subscription and Support with each IBM Program licensed under the IPLA.

IBM Software Subscription and Support begins on the date of IBM Program acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from acquisition.

While IBM Software Subscription and Support is in effect, IBM makes available defect corrections, restrictions, bypasses, and any new versions, releases, or updates IBM makes generally available. Once IBM Software Subscription and Support has been allowed to lapse, these benefits will no longer be available to Client if they had been made available while IBM Software Subscription and Support was in effect and Client chose not to exercise that right.

While IBM Software Subscription and Support is in effect, IBM provides Client assistance for Client's i) routine,

short duration installation and usage (how-to) questions; and ii) code-related questions (together "Support"). Consult the IBM Software Support Handbook for details at <https://www.ibm.com/software/support/handbook.html>. Support for a particular version or release of an IBM Program is available only until IBM withdraws Support for that IBM Program's version or release.

When Support is withdrawn, Client must upgrade to a supported version or release of the IBM Program to continue to receive Support. The IBM "Software Support Lifecycle" policy is available at <https://www.ibm.com/software/support/lifecycle>.

For selected Program versions or releases, as listed in the IBM Software Support Handbook, after Support has been withdrawn for such versions or releases and while Client has current Software Subscription and Support coverage in effect for such Programs, IBM will provide support for Client's i) routine, short duration installation and usage (how-to) questions; and ii) code-related questions. However, in such cases, IBM will only provide existing code patches and fixes and will not develop or provide new patches or fixes for those versions or releases.

If Client elects to continue IBM Software Subscription and Support for an IBM Program at a designated Client Site, Client must maintain IBM Software Subscription and Support for all uses and installations of the IBM Program at that Site.

If Client requests to renew expiring IBM Software Subscription and Support at a lesser quantity of IBM Program uses and installations than the expiring quantity, Client must provide a report that verifies current IBM Program usage and installation, and may be required to provide other compliance verification information.

Client shall not use IBM Software Subscription and Support benefits for IBM Programs for which Client has not fully paid for IBM Software Subscription and Support. If Client does, Client must acquire IBM Software Subscription and Support Reinstatement sufficient to cover all such unauthorized use at then current IBM prices.

3.9 Selected Support

Selected Support may be available for (i) Non-IBM Programs, or for (ii) Programs licensed under the IBM License Agreement for Non-Warranted Programs (together "Selected Programs").

The IBM Software Subscription and Support section above applies to Selected Programs under Selected Support except that 1) IBM may provide Client with assistance in designing and developing applications based on Client's subscription level; 2) the IBM "Software Support Lifecycle" policy does not apply; and 3) no new versions, releases or updates are provided by IBM.

IBM does not provide licenses under this Agreement for Selected Programs.

4. Appliances

An Appliance is an EP which is any combination of Program Components, Machine Components (MCs) and any applicable Machine Code Components offered together as a single offering and designed for a particular function. Unless otherwise provided, terms that apply to a Program apply to the Program Component of an Appliance. Client shall not use an Appliance component independently of the Appliance of which it is a part

Each Appliance is manufactured from parts that may be new or used, and in some cases, an Appliance or its replacement parts may have been previously installed. Regardless, IBM's warranty terms apply.

For each Appliance, IBM bears the risk of loss or damage up to the time it is delivered to the IBM- designated carrier for shipment to Client or Client's designated location. Thereafter, Client assumes the risk. Each Appliance will be covered by insurance, arranged and paid for by IBM for Client, covering the period until it is delivered to Client or Client's designated location. For any loss or damage, Client must i) report the loss or damage in writing to IBM within 10 business days of delivery, and ii) follow the claim procedure.

When Client acquires an Appliance directly from IBM, IBM transfers title to a MC to Client or, if applicable, Client's lessor, upon payment of all the amounts due except in the United States where title transfers upon shipment. For an upgrade acquired for an Appliance, IBM reserves transfer of title of the MC until IBM receives payment of all the amounts due and receives all removed parts, which then become IBM's property.

If IBM is responsible for installation, Client will allow installation within 30 calendar days of shipment or additional

charges may apply. Client will promptly install or allow IBM to install mandatory engineering changes. Client installs a Client-set-up Appliance according to instructions provided with it.

A Machine Code Component is computer instructions, fixes, replacements and related materials, such as data and passwords relied on, provided by, used with or generated by a Machine Component, that permit the operation of the Machine Component's processors, storage, or other functionality as stated in its specifications. Client acceptance of this Agreement includes acceptance of IBM's Machine Code license agreements provided with the Appliance. A Machine Code Component is licensed only for use to enable a Machine Component to function under its specifications and only for the capacity and capability for which Client has acquired IBM's written authorization. The Machine Code Component is copyrighted and licensed (not sold).

4.1 IBM Appliance Services

IBM provides Appliance Services for Appliances consisting of Machine maintenance and IBM Software Subscription and Support as a single offering as further described in the Appliance Support Handbook at <https://www.ibm.com/software/support/handbook.html>.

One year of Appliance Services, starting on the Warranty Start Date specified in a TD, is included with the purchase of an Appliance. Thereafter, automatic renewal terms apply. All renewals will be fulfilled with Appliance Services offered at the same level of service, if available, that Client was entitled to during that first year. Parts removed or exchanged for upgrade, warranty service, or maintenance are IBM property and must be returned to IBM within 30 calendar days. A replacement takes on the warranty or maintenance status of the replaced part. When Client returns an Appliance to IBM, Client will remove all features not supported under Appliance Services, securely erase all data, and ensure that it is free of any legal restrictions that would prevent its return.

Appliance Services cover undamaged and properly maintained and installed Appliances used as authorized by IBM with unaltered identification labels. Services do not cover alterations, accessories, supply items, consumables (such as batteries), structural parts (such as frames and covers), or failures caused by a product for which IBM is not responsible.

5. Cloud Services

Cloud Services are EPs provided by IBM and made available via a network. Cloud Services are not Programs but may require Client to download enabling software to use a Cloud Service as specified in a TD.

Client may access and use a Cloud Service only to the extent of authorizations acquired by Client. Client is responsible for use of Cloud Services by any party who accesses the Cloud Service with Client's account credentials. A Cloud Service may not be used in any jurisdiction for unlawful, obscene, offensive, or fraudulent Content or activity, such as advocating or causing harm, interfering with, or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive, or deceptive messages, viruses or harmful code, or violating third party rights. If there is a complaint or notice of violation, use may be suspended until resolved, and terminated if not resolved promptly.

Additional terms, including data protection terms, for Cloud Services are provided in the General Terms for Cloud Offerings Terms of Use. Each Cloud Service is described in a TD. Terms of Use and Service Descriptions can be viewed at <https://www-03.ibm.com/software/sla/sladb.nsf/sla/saas/>. Cloud Services are designed to be available 24/7, subject to maintenance. Client will be notified of scheduled maintenance. Technical support and service level commitments, if applicable, are specified in a TD.

IBM will provide the facilities, personnel, equipment, software, other resources necessary to provide the Cloud Services, and generally available user guides and documentation to support Client's use of the Cloud Service. Client will provide hardware, software, and connectivity to access and use the Cloud Service, including any required Client-specific URL addresses and associated certificates. A TD may have additional Client responsibilities.

A Cloud Service subscription period begins on the date that IBM notifies Client that Client has access and ends on the date specified in the TD. During a Cloud Service subscription period, Client may increase Client's subscribed level, but may only decrease the subscribed level at the end of a subscription period when renewing.

Attachment 4

Installment Payment Agreement For State and Local Government

**International Business Machines Corporation
Installment Payment Agreement For State and Local Government**

Installment Payment Agreement No. LP004148292

This Installment Payment Agreement For State and Local Government ("Agreement") covers the terms and conditions under which IBM (as defined below) will finance various charges.

This Agreement and its applicable Supplements and Addenda along with any required documents that reference this Agreement or a Supplement and which are listed in the applicable Supplement, are the complete agreement regarding the Installment Payment Transactions and replace any prior oral or written communications between both parties. Any addenda to this Agreement or an applicable Supplement ("Addenda") must be agreed to in writing by both County and IBM. Any attachment to this Agreement or an applicable Supplement ("Attachment") must be referenced in such Agreement or Supplement. If there is a conflict of terms among the documents, the order of precedence will be as follows: (a) Attachments or Addenda to the Supplement, (b) Supplement, (c) Attachments or Addenda to the Agreement, (d) this Agreement.

By signing below, both parties agree to the terms of this Agreement. Once signed, any reproduction of this Agreement or a Supplement made by reliable means (for example, photocopy or facsimile) is considered an original.

Part 1 - Definitions

The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Agreement" means Installment Payment Agreement between the County and IBM related to payment terms outlined herein.

"Commencement Date" is the date when the term of an Installment Payment Transaction and County's obligation to pay Installment Payments for such Installment Payment Transaction commence, which date shall be: (i) for Equipment, the date of the Supplier's Invoice, provided County does not notify IBM of County's rejection of the Equipment within ten (10) days following County's receipt of the Equipment; (ii) for software, date of the Supplier's Invoice; or (iii) for services or if IBM requires County's acceptance, the date specified by County on a County executed certificate of acceptance ("Acceptance Date"), in form and satisfactory to IBM("COA").

"Equipment" means, collectively, the equipment financed pursuant to this Agreement, and with respect to each Installment Payment Supplement, the equipment described in each Installment Payment Supplement, and all repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.1 or Part 9.

"Event of Default" is defined in Section 13.1.

"Financed Items" means any software program licenses, maintenance, services, and other one-time charges to be financed pursuant to this Agreement, and with respect to each Installment Payment Supplement, such items described therein.

"IBM" means International Business Machines Corporation, and its successors and assigns.

"Installment Payment Transaction" means the financed transaction for Property set forth in any Installment Payment Supplement entered into pursuant this Agreement.

"Installment Payment Supplement" or **"Supplement"** means an Installment Payment Supplement in the form attached hereto.

"Installment Payments" means the installment payments payable by County under Part 6 of this Agreement and with respect to each Installment Payment Supplement, the Payment Amounts set forth in each applicable Payment Schedule for such Supplement.

"Installment Payment Dates" means the dates for the Installment Payments as set forth in the Payment Schedules for each Installment Payment Supplement.

"Nonappropriation Event" is defined in Section 6.6.

"Original Term" means, with respect to an Installment Payment Transaction, the period from the Commencement

Date until the end of the budget year of County in effect at the Commencement Date.

“Payment Schedule” means, with respect to an Installment Payment Transaction, one or more schedules of installment payments for the Original Term and all Renewal Terms that indicates the Payment Due Date, the Installment Payment, and the Prepayment Price as set forth in each Payment Schedule.

“Property” means, collectively, the Equipment and Financed Items financed pursuant to this Agreement, and with respect to each L Installment Payment Supplement, the Equipment and Financed Items described in such Installment Payment Supplement.

“Purchase Price” means the amount that County may, in its discretion, pay to IBM to purchase the Property under an Installment Payment Supplement, as provided in Section 11.1 and as set forth in the Installment Payment Supplement.

“Renewal Terms” means the renewal terms of an Installment Payment Transaction, each having a duration of one year and a term coextensive with County's budget year.

“State” means the state where County is located.

“Supplier” means International Business Machines Corporation “IBM”, or any other manufacturer, vendor or provider of the Property financed by County.

“Term” means, with respect to an Installment Payment Transaction, the Original Term and all Renewal Terms. The Term for each Installment Payment Transaction entered into hereunder shall be set forth in an Installment Payment Supplement, as provided in Section 4.2. **“County” or “Customer” or “Client”** means the entity identified as such on the signature line below, and its permitted successors and assigns.

Part 2 - Separate Installment Payment Transactions

Each Supplement executed and delivered under this Agreement shall be a separate Installment Payment Transaction, distinct from other Supplements. Without limiting the foregoing, upon the occurrence of an Event of Default or a Nonappropriation Event with respect to a Supplement, IBM shall have the rights and remedies specified herein with respect to the Property financed and the Installment Payments payable under such Supplement, and except as expressly provided in Section 12.2 below, IBM shall have no rights or remedies with respect to Property financed or Installment Payments payable under any other Supplements unless an Event of Default or Nonappropriation Event has also occurred under such other Supplements.

Part 3 - County's Covenants

As of the Commencement Date for each Supplement executed and delivered hereunder, County shall be deemed to represent, covenant and warrant for the benefit of IBM as follows:

- a. County is a public body corporate and politic duly organized and existing under the constitution and laws of the State with full power and authority to enter into this Agreement and the Supplement and the transactions contemplated thereby and to perform all of its obligations thereunder. County has a substantial amount of one or more of the following sovereign powers: (i) the power to tax, (ii) the power of eminent domain, and (iii) the police power.
- b. County will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic. To the extent County should merge with another entity under the laws of the State, County agrees that as a condition to such merger it will require that the remaining or resulting entity shall be assigned County's rights and shall assume County's obligations hereunder.
- c. County has been duly authorized to execute and deliver this Agreement and the Supplement by proper action by its governing body, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement and the Supplement, and County has complied with such public bidding requirements as may be applicable to this Agreement and the Supplement and the acquisition by County of the Property thereunder. County further represents, covenants, and warrants with respect to each Supplement that it has been, or will be prior to its Commencement Date, approved by the Board of County Commissioners of County.
- d. During the Term for the Supplement, the Property thereunder will perform and will be used by County only for the purpose of performing essential governmental uses and public functions within the permissible scope of County's authority.

- e. County will provide IBM with current financial statements, budgets and proof of appropriation for the ensuing budget year and other financial information relating to the ability of County to continue this Agreement and the Supplement in such form and containing such information as may be requested by IBM.
- f. County will comply with all applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest component of Installment Payments under the Supplement and will not use or permit the use of the Property in such a manner as to cause a Supplement to be a "private activity bond" under Section 141(a) of the Code. County covenants and agrees that no part of the proceeds of the Supplement shall be invested in any securities, obligations or other investments except for the temporary period pending such use nor used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of issuance of the Agreement, would have caused any portion of the Supplement to be or become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the date of issuance of the Supplement.
- g. The execution, delivery and performance of this Agreement and the Supplement and compliance with the provisions hereof and thereof by County does not conflict with, or result in a violation or breach or constitute a default under, any resolution, bond, agreement, indenture, mortgage, note, lease of, or other instrument to which County is a party or by which it is bound by any law or any rule, regulation, order or decree of any court, governmental agency or body having jurisdiction over County or any of its activities or properties resulting in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any property or assets of County or to which it is subject.
- h. County's exact legal name is as set forth on the first page of this Agreement. County will not change its legal name in any respect without giving thirty (30) days' prior notice to IBM.

Part 4 - The Transactions

- 41 Financing of Property.** On the Commencement Date of each Installment Payment Transaction executed in the Supplement hereunder, IBM will be deemed to demise and finance to County, and County will be deemed to finance and hire from IBM, the Property described in such Supplement, in accordance with this Agreement and such Supplement, for the Term set forth in such Supplement.
- 42 Installment Payment Term.** The term of each Installment Payment Transaction shall commence on the Commencement Date and shall terminate upon payment of the final Installment Payment set forth in such Payment Schedule unless terminated sooner pursuant to this Agreement or the Supplement. If the term of a Supplement exceeds 5 years, County represents and covenants that the Installment Payments are payable from sources other than ad valorem taxes.
- 43 Delivery and Installation.** County shall order the Property, shall cause the Property to be delivered and installed at the locations specified in the applicable Supplement, and shall pay all taxes, delivery costs and installation costs, if any, in connection therewith. To the extent funds are deposited under an escrow agreement for the acquisition of the Property, such funds shall be disbursed as provided therein.
- 44 Assignment to IBM.** Although IBM shall have the obligation to pay the Supplier for the Property, not to exceed the principal amount set forth in the Supplement, title to the Property shall pass directly from Supplier to County unless otherwise provided. All other rights and obligations as defined in the agreement between County and County's Supplier governing the purchase of the Property ("Purchase Agreement") shall remain with County. County represents that it has reviewed and approved the Purchase Agreement. IBM will not modify or rescind the Purchase Agreement.
- 45 Credit Review.** For each Installment Payment Transaction, County consents to a reasonable credit review by IBM.

Part 5 - IBM's Rights of Access

- 5.1 Enjoyment of Property.** County shall during the Term peaceably and quietly have, hold and enjoy the Property, without suit, trouble or hindrance from IBM, except as expressly set forth in this Agreement. Neither IBM nor its successors or assigns shall interfere with such quiet use and enjoyment during the Term so long as County

is not in default under the subject Supplement.

5.2 Location; Inspection. The Property will be initially located or based at the location specified in the applicable Supplement. Upon reasonable advance request, County agrees to allow IBM to inspect the Equipment and its maintenance records during County's normal business hours, subject to County's reasonable security procedures. County will affix to the Equipment any identifying labels supplied by IBM indicating ownership.

Part 6 - Payments

6.1 Installment Payments to Constitute a Current Expense of County. IBM and County understand and intend that the obligation of County to pay Installment Payments hereunder shall constitute a current expense of County and shall not in any way be construed to be a debt of County in contravention of any applicable constitutional, statutory or charter limitation or requirement concerning the creation of indebtedness by County, nor shall anything contained herein constitute a pledge of the faith and credit or taxing power of County. Upon the appropriation of Installment Payments for a fiscal year, the Installment Payments for said fiscal year, and only the Installment Payments for said current fiscal year, shall be a binding obligation of County; provided that such obligation shall not include a pledge of the taxing power of County. IBM acknowledges that in no event may it compel the use of ad valorem taxing power to compel County to pay Installment Payments or other payment obligations under this Agreement. County further represents and covenants that the Installment Payments are payable from sources other than ad valorem taxes.

6.2 Payment of Installment Payments. County shall promptly pay Installment Payments under each Supplement, exclusively from legally available funds, in lawful money of the United States of America, to IBM in such amounts and on such dates as described in the applicable Payment Schedule, at IBM's address set forth as the "remit to" address in the invoice, unless IBM instructs County otherwise. County shall pay IBM a charge on any delinquent Payments in an amount sufficient to cover all additional costs and expenses incurred by IBM from such delinquent Payment. In addition, County shall pay a late charge of five cents per dollar or the highest amount permitted by applicable law, whichever is lower, on all delinquent Payments and interest on said delinquent amounts from 30 days after the date such amounts were due until paid at the rate of 12% per annum or the maximum amount permitted by law, whichever is less. Notwithstanding the foregoing, Payments made in accordance with Florida Statute 218.74 and Section 2-8.1.4 of the Code of Miami-Dade County shall not be subject to any late charge hereunder.

6.3 This section intentionally left blank.

6.4 Installment Payments to be Unconditional. SUBJECT TO SECTION 6.6, THE OBLIGATIONS OF COUNTY TO PAY THE INSTALLMENT PAYMENTS DUE UNDER THE SUPPLEMENTS AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED HEREIN SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING WITHOUT LIMITATION, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE PROPERTY OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES. THIS PROVISION SHALL NOT LIMIT COUNTY'S RIGHTS OR ACTIONS AGAINST ANY SUPPLIER AS PROVIDED IN SECTION 10.2.

6.5 Continuation of Financing by County. County intends to continue all Supplements entered into pursuant to this Agreement and to pay the Installment Payments thereunder. County reasonably believes that legally available funds in an amount sufficient to make all Installment Payments during the term of all Supplements can be obtained. County agrees that during the budgeting process for each budget year its staff will provide to the governing body of County notification of any Installment Payments due under the Supplements during the following budget year.

6.6 Nonappropriation. If, during the then current Original Term or Renewal Term, sufficient funds are not appropriated to make Installment Payments required under a Supplement for the following fiscal year, County shall be deemed to not have renewed such Supplement for the following fiscal year and the Supplement shall terminate at the end of the then current Original Term or Renewal Term and County shall not be obligated to make Installment Payments under said Supplement beyond the then current fiscal year for which funds have been appropriated. Upon the occurrence of such nonappropriation (a "Nonappropriation Event") County shall, no later than the end of the fiscal year for which Installment Payments have been appropriated, deliver possession of the Property under said Supplement, including free and clear title thereof to IBM. If County fails to deliver possession of the Property to IBM upon termination of said Supplement by reason of a Nonappropriation Event, the termination shall

nevertheless be effective but County shall be responsible for the payment of damages in an amount equal to the portion of Installment Payments thereafter coming due that is attributable to the number of days after the termination during which the County fails to deliver possession and for any other loss suffered by IBM as a result of County's failure to deliver possession as required. In the event of a Nonappropriation Event under a Supplement, County shall cease use of all software financed or acquired under the applicable Supplement and shall confirm and state in writing to IBM that it has: (1) deleted or disabled all files and copies of the software from the equipment on which it was installed; (2) returned all software documentation, training manuals, and physical media on which the software was delivered; and (3) has no ability to use the returned software. IBM may, by written instructions to any escrow agent who is holding proceeds of the Supplement, instruct such escrow agent to release all such proceeds and any earnings thereon to IBM, such sums to be credited to County's obligations under the Supplement and this Agreement. County shall notify IBM in writing within seven (7) days after the failure of the County to appropriate funds sufficient for the payment of the Installment Payments, but failure to provide such notice shall not operate to extend the Term or result in any liability to County. In the event of such nonappropriation, upon request from IBM, County agrees to provide in a timely manner, written evidence of such nonappropriation, a copy of the fiscal year budget in which such nonappropriation occurred and any other related documentation reasonably requested by IBM.

Part 7 - Title

7.1 Title to the Property. Upon acceptance of the Equipment by County and unless otherwise required by the laws of the State, title to the Equipment shall vest directly in County from the Supplier. Software that the County acquires from the Supplier and finances with IBM remains the property of the licensor. Ownership of the software is governed by the license agreement between the licensor and the County and is not affected by this Agreement.

7.2 Personal Property. The Equipment is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. If requested by IBM, County will, at County's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

Part 8 - Maintenance and Ancillary Charges

8.1 Maintenance of Equipment by County. County shall keep and maintain the Equipment in good condition and working order and in compliance with the manufacturer's specifications, shall use, operate and maintain the Equipment in conformity with all laws and regulations concerning the Equipment's ownership, possession, use and maintenance, and shall keep the Equipment free and clear of all liens and claims. County shall have sole responsibility to maintain and repair the Equipment.

8.2 Liens, Taxes, Other Governmental Charges and Utility Charges.

County shall keep the Property free of all levies, liens and encumbrances. The parties to this Agreement contemplate that the Property will be used for a governmental or proprietary purpose of County and, therefore, that the Property will be exempt from all property taxes. The Installment Payments payable by County under this Agreement and the Supplements hereunder have been established to reflect the savings resulting from this exemption from taxation. County will take such actions necessary under applicable law to obtain said exemption. Nevertheless, if the use, possession or acquisition of the Property is determined to be subject to taxation or later becomes subject to such taxes, County shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to the Property. County shall pay all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property. County shall pay such taxes or charges as the same may become due; provided that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, County shall be obligated to pay only such installments as accrue during the then current fiscal year of the Term for such Property.

8.3 Insurance. At its own expense, County shall maintain (a) casualty insurance insuring the Property against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by IBM in an amount equal to at least the outstanding principal component of Installment Payments, and (b) liability insurance that protects IBM from liability in all events in an amount reasonably acceptable to IBM, and (c) worker's compensation insurance covering all employees working on, in, near or about the Property; provided that County may self-insure against all such risks. All such insurance shall contain a provision to the effect that such insurance shall not be canceled or modified without first giving

written notice thereof to IBM and County at least thirty (30) days in advance of such cancellation or modification. Such changes shall not become effective without IBM's prior written consent. The amount of insurance proceeds from casualty losses necessary to satisfy the remainder of the Installment Payments for the Property shall be payable to IBM within thirty (30) days of receipt by County. Upon IBM's request, County shall, within thirty (30) days of such request, furnish to IBM, for each Supplement, certificates evidencing such coverage, or, if County self-insures, a written description of its self-insurance program together with a certification from County's risk manager or insurance agent or consultant to the effect that County's self-insurance program provides adequate coverage against the risks listed above.

8.4 This section intentionally left blank.

Part 9 - Casualty Loss

9.1 Damage or Destruction. If (a) the Property under a Supplement or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Property under a Supplement or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, such events shall not relieve County of any obligations hereunder.

Part 10 - Warranties: Use of Equipment and/or Financed Items

10.1 Disclaimer of Warranties.

UNDER ANY ASSIGNMENT HEREUNDER, ASSIGNEE MAKES NO (AND SHALL NOT BE DEEMED TO HAVE MADE ANY) WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN, OPERATION OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE PROPERTY, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE STATE OF TITLE THERETO OR ANY COMPONENT THEREOF, THE ABSENCE OF LATENT OR OTHER DEFECTS (WHETHER OR NOT DISCOVERABLE), AND ASSIGNEE HEREBY DISCLAIMS THE SAME; IT BEING UNDERSTOOD THAT THE PROPERTY IS LEASED TO COUNTY "AS IS" ON THE DATE OF THIS AGREEMENT OR THE DATE OF DELIVERY, WHICHEVER IS LATER, AND ALL SUCH RISKS, IF ANY, ARE TO BE BORNE BY COUNTY. County acknowledges that it has made (or will make) the selection of the Property from the Supplier based on its own judgment and expressly disclaims any reliance upon any statements or representations made by Assignee. County understands and agrees that (a) neither the Supplier nor any sales representative or other agent of Supplier, is (i) an agent of Assignee, or (ii) authorized to make or alter any term or condition of this Agreement, and (b) no such waiver or alteration shall vary the terms of this Agreement unless expressly set forth herein. In no event shall IBM or Assignee be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Supplements, or the existence, furnishing, functioning or use of any item, product or service provided for in this Agreement or the Supplements.

10.2 Supplier's Warranties.

IBM (except when IBM is the Supplier of the Property) and any permitted assignee hereunder hereby irrevocably assigns to County all rights that IBM may have to assert from time to time whatever claims and rights (including without limitation warranties) related to the Property against the Supplier. County's sole remedy for the breach of such warranty, indemnification or representation shall be against the Supplier of the Property, and not against IBM or its permitted assignee hereunder, nor shall such matter have any effect whatsoever on the rights and obligations of IBM or its permitted assignees hereunder with respect to this Agreement, including the right to receive full and timely payments hereunder. County expressly acknowledges that IBM and any permitted assignee hereunder makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties of the Supplier of the Property.

10.3 Use of the Property. County will not install, use, operate or maintain the Property improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement and the applicable Supplement. County shall provide all permits and licenses, if any, necessary for the installation and operation of the Property. In addition, County agrees to comply in all respects with all laws of the jurisdiction in which its operations involving any item of Property may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Property (including compliance with any applicable

privacy laws, rules or regulations and in conjunction therewith County, upon cessation of the use, operation and control of, and prior to any disposition of the Equipment, shall destroy any data contained thereon that would be subject to such privacy laws, rules or regulations); provided that County may contest in good faith the validity or application of any such law or rule in any reasonable manner that does not, in the opinion of IBM, adversely affect the interest of IBM in and to the Property or its interest or rights under this Agreement. County shall promptly notify IBM in writing of any pending or threatened investigation, inquiry, claim or action by any governmental authority which could adversely affect this Agreement, any Supplement or the Property thereunder.

104 Modifications. Subject to the provisions of this Section, County shall have the right, at its own expense, to make alterations, additions, modifications or improvements to the Equipment. All such alterations, additions, modifications and improvements shall thereafter comprise part of the Equipment and shall be subject to the provisions of this Agreement. Such alterations, additions, modifications and improvements shall not in any way damage the Equipment, substantially alter its nature or cause it to be used for purposes other than those authorized under the provisions of state and federal law; and the Equipment, on completion of any alterations, additions, modifications or improvements made pursuant to this Section, shall be of a value which is equal to or greater than the value of the Equipment immediately prior to the making of such alterations, additions, modifications and improvements. County shall, at its own expense, make such alterations, additions, modifications and improvements to the Equipment as may be required from time to time by applicable law or by any governmental authority.

Part 11 - Prepayments

11.1 This section intentionally left blank.

11.2 Option to Prepay. County shall have the option to prepay (a) in whole, but not in part, the Installment Payments due under a Supplement on any Installment Payment Date, at the Prepayment Price set forth in the Payment Schedule as the "Prepayment Price", or (b) in part, by requesting, in writing, the Prepayment Price for the portion of the remaining Installment Payments allocable to the Property being prepaid. When electing to prepay, County shall also pay any past due amounts, and any other monetary amounts due under the Supplement to IBM.

The Prepayment Price shall be an amount equal to the present value of the portion of the remaining Installment Payments allocable to the Property being prepaid ("PV of Payments") plus a Prepayment Fee, if applicable. The Prepayment Fee is calculated by multiplying the PV of Payments by the Prepayment Fee Rate set forth in such Payment Schedule as the "Prepayment Fee Rate". If no Prepayment Fee Rate is shown on the Payment Schedule, then the Prepayment Fee is not applicable.

Part 12 - Assignment; Risk of Loss

121 Assignment by IBM. IBM's right, title and interest in, to and under each Supplement and the Property under such Supplement may be assigned and reassigned in whole or in part to one or more assignees or subassignees by IBM with the prior written consent of County. The parties acknowledge that a one time assignment of Contractor's rights under the Installment Payment Supplement No. 079512 pursuant to the Installment Payment Agreement to IBM Credit LLC shall not require written consent of the County provided that IBM Credit LLC shall be required to comply with Article 33, Vendor Registration/Conflict of Interest. County shall retain all such approvals of assignment as a register of all assignees and shall make all payments to the assignee or assignees designated in such register without abatement and County shall not assert against any assignee any claim, defense, setoff or counterclaim. If any such assignment is approved by the County, the County agrees to execute all documents, including notices of assignment that may be reasonably requested by IBM or any assignee to protect its interests in this Agreement and the Supplements. IBM named above will remain the billing and collection agent for any of its assignees under this Section 12. Any assignment as provided for in this Section 12 of this Agreement shall not cause the assignee to assume IBM's obligations under the Purchase Agreement that are not set forth in this Agreement or a Supplement, and nothing in this Agreement requires that any assignee assume any obligations under the Purchase Agreement that are not set forth in this Agreement or a Supplement.

122 Supplements. Separate Financings. Assignees of the IBM's rights in one Supplement shall have no rights in any other Supplement unless such rights have been separately assigned.

123 Assignment and Subleasing by County. NONE OF COUNTY'S RIGHT, TITLE AND INTEREST IN, TO

AND UNDER THIS AGREEMENT OR ANY SUPPLEMENT AND IN THE PROPERTY MAY BE ASSIGNED, SUBLEASED OR ENCUMBERED BY COUNTY FOR ANY REASON, WITHOUT THE PRIOR WRITTEN CONSENT OF IBM . Any request by County to assign a Supplement or any Property thereunder must be accompanied by an opinion of tax counsel satisfactory to IBM that the assignment will cause no material change to the federal income tax treatment of the amounts payable as interest under the Supplement.

124 Risk of Loss Covenants. County shall not be required to indemnify or hold IBM harmless against liabilities arising from the Agreement. However, as between IBM and County, and to the extent permitted by law, County shall bear the risk of loss for and shall pay directly any and all claims, liabilities, proceedings, actions, expenses, damages or losses arising under or related to the Property, including, but not limited to, the possession, ownership, lease, use or operation thereof, except that (provided that County has complied with its obligations under Section 10.3) County shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses, damages or losses that arise directly from events occurring after County has surrendered possession of the Property in accordance with the terms of the Agreement to IBM or that arise directly from the gross negligence or willful misconduct of the IBM .

Part 13 - Defaults and Remedies

13.1 Events of Default Defined. Any of the following shall constitute an “Event of Default” under a Supplement:

- a. Failure by County to pay any Installment Payment under the Supplement or other payment required to be paid with respect thereto at the time specified therein;
- b. Failure by County to observe and perform any covenant, condition or agreement on its part to be observed or performed with respect to the Supplement, other than as referred to in subparagraph (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to County by IBM , unless IBM shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, IBM will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by County within the applicable period and diligently pursued until the default is corrected;
- c. Any statement, representation or warranty made by County in or pursuant to the Supplement or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;
- d. County shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of County, or of all or a substantial part of the assets of County, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against County in any bankruptcy, reorganization or insolvency proceeding; or
- e. An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of County or of all or a substantial part of the assets of County, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days.

The foregoing provisions of Section 13.1 are subject to the following limitation: if by reason of force majeure County is unable in whole or in part to perform its agreements under this Agreement and the Supplement (other than the obligations on the part of County contained in Part 6 hereof) County shall not be in default during the continuance of such inability. The term “force majeure” as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of County.

A Nonappropriation Event is not an Event of Default.

13.2 Remedies on Default. Whenever any Event of Default exists with respect to a Supplement, IBM shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

- a. Without terminating the Supplement, and by written notice to County, IBM may declare all Installment Payments and other amounts payable by County thereunder to the end of the then current budget year of County to be due, including without limitation delinquent Installment Payments under the Supplement from prior budget years, and such amounts shall thereafter bear interest at the rate of 12% per annum or the maximum rate permitted by applicable law, whichever is less;
- b. IBM may terminate the Supplement;
- c. By written notice to any escrow agent who is holding proceeds of the Supplement, IBM may instruct such escrow agent to release all such proceeds and any earnings thereon to IBM, such sums to be credited to payment of County's obligations under the Supplement;
- d. IBM may take any action, at law or in equity, that is permitted by applicable law and that may appear necessary or desirable to enforce or to protect any of its rights under the Supplement and this Agreement.
- e. Following an Event of Default or an Event of Nonappropriation hereunder and upon failure of County to voluntarily comply with Section 6.6, IBM may take any action, at law, that is permitted by applicable law and that may appear necessary or desirable to enforce or to protect any of its rights under the Supplement and this Agreement against County's legally available funds. IBM and County agree that there is no intention to create under this Agreement and the applicable Supplement a right of IBM to dispossess County involuntarily of the legal title to or the right of use of the Property. IBM hereby irrevocably waives any right to specific performance of County's covenant to transfer legal title to and return of possession of the Property to IBM.

13.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to IBM is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle IBM to exercise any remedy reserved to it in this Part it shall not be necessary to give any notice, other than such notice as may be required in this Part.

13.4 This section is intentionally left blank.

Part 14 - General

14.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when emailed or three days after mailing by standard or trackable mail, to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party), to any assignee at its address as it appears on the registration books maintained by County. Notices of an Event of Default shall be delivered by certified or registered mail.

14.2 Arbitrage Certifications. County shall be deemed to make the following representations and covenants as of the Commencement Date for each Supplement:

- a. The estimated total costs, including taxes, freight, installation, cost of issuance, of the Financed Items under the Supplement will not be less than the total amount of the Installment Payments.
- b. County has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Installment Payments under the Supplement, or (ii) that may be used solely to prevent a default in the payment of the Payments under the Supplement.
- c. The Property under the Supplement has not been and is not expected to be sold or otherwise disposed of by County, either in whole or in major part, prior to the last maturity of the Installment Payments under the Supplement.

d. There are no other obligations of County which (i) are being sold within 15 days of the Commencement Date of the Supplement; (ii) are being sold pursuant to the same plan of financing as the Supplement; and (iii) are expected to be paid from substantially the same source of funds.

e. The officer or official who has executed the Supplement on County's behalf is familiar with County's expectations regarding this Section 14.2. To the best of County's knowledge, information and belief, the facts and estimates set forth in herein are accurate and the expectations of County set forth herein are reasonable.

14.3 Further Assurances. County agrees to execute such other and further documents, including, without limitation, confirmatory financing statements, continuation statements, certificates of title and the like, and to take all such action as may be necessary or appropriate, from time to time, in the reasonable opinion of IBM, to perfect, confirm, establish, reestablish, continue, or complete the interests of IBM in this Agreement and the Supplements, to consummate the transactions contemplated hereby and thereby, and to carry out the purposes and intentions of this Agreement and the Supplements.

14.4 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon IBM and County and their respective successors and assigns.

14.5 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

14.6 Amendments, Changes and Modifications. This Agreement may be amended in writing by IBM and County to the extent the amendment or modification does not apply to outstanding Supplements at the time of such amendment or modification

14.7 Execution in Counterparts. This Agreement and the Supplements hereunder may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

14.8 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

14.9 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

14.10 Accounting. Neither IBM, nor any other IBM organization or affiliate makes any representation whatsoever regarding County's accounting treatment applicable to the Agreement. IBM accounts for receivables under this Agreement as financing receivables for US reporting purposes.

14.11 Business Contact Information. IBM and its affiliates, and their contractors and subprocessors, may store and otherwise process business contact information (BCI) of County personnel and authorized users, for example name, business telephone, address and email, in connection with this Agreement wherever they do business. Where notice to or consent by the individuals is required for such processing, County will notify and obtain the consent of any such individuals.

14.12 Account Data. Account Data is information, other than data and information ("Content") from all equipment and BCI, that County provides to IBM to enable County's acquisition and use of Eligible Products or that IBM collects using tracking technologies, such as cookies and web beacons, regarding County's use of IBM products. IBM and its affiliates, its contractors and subprocessors may use Account Data for example, to enable product features, administer use, personalize experience, and otherwise support or improve use of IBM Products. The IBM Online Privacy Statement at <https://www.ibm.com/privacy/details/us/en/> and applicable attachments or transaction documents provides additional details.

THIS SECTION INTENTIONALLY LEFT BLANK

Agreed to by County: MIAMI-DADE COUNTY

By: _____

Authorized Signature Name (type or print): _____

Title: _____

Date: _____

Email Address: _____

**Agreed to by:
International Business Machines Corporation**

By: _____

Authorized Signature Name (type or print): _____

Title: _____

Date: _____

International Business Machines Corporation
COMPOSITE SIGNATURE PAGE

Date: September 29, 2020

Page 1 of 1

Client Name and
Address: Miami-Dade
County
111 NW 1st ST
Miami, FL 33128

Client Agreement
Number (*)

Document Description

Amount(\$)

LP004148292	Installment Payment Agreement For State and Local Government	n/a
081779	Installment Payment Supplement	\$2,969,631.37
N/A	Payment Schedule for Installment Payment Supplement No.081779	\$2,969,631.37

(*) Document Numbers are the Agreement Numbers, Schedule Numbers, Amendment Numbers and/or Addendum Numbers for the listed documents.

BY CLIENT'S SIGNATURE BELOW, THE CLIENT ACKNOWLEDGES THAT CLIENT HAS READ, UNDERSTANDS AND AGREES TO THE TERMS OF THE DOCUMENTS LISTED ABOVE, AND CLIENT IS SIGNING THIS COMPOSITE SIGNATURE PAGE AS A CONVENIENCE IN LIEU OF SIGNING EACH SUCH DOCUMENT SEPARATELY. ONCE THIS SIGNATURE PAGE IS SIGNED BY CLIENT, EACH OF THE DOCUMENTS LISTED ABOVE SHALL BE DEEMED TO BE EXECUTED AND ACCEPTED BY CLIENT, AND ONCE THIS SIGNATURE PAGE IS SIGNED BY INTERNATIONAL BUSINESS MACHINES CORPORATION, EACH OF THE DOCUMENTS LISTED ABOVE SHALL BE DEEMED TO BE EXECUTED AND ACCEPTED BY INTERNATIONAL BUSINESS MACHINES CORPORATION. THIS SIGNATURE PAGE SHALL BE DEEMED A SIGNATURE PAGE TO, AND A PART OF, EACH OF THE DOCUMENTS LISTED ABOVE. ANY REPRODUCTION OF ANY DOCUMENT LISTED ABOVE AND THIS SIGNATURE PAGE (FROM A COPY THEREOF MAINTAINED BY INTERNATIONAL BUSINESS MACHINES CORPORATION IN ELECTRONIC FORM, OR REPRODUCED BY ANY OTHER RELIABLE MEANS (FOR EXAMPLE, PHOTOGRAPHY, IMAGE, OR FACSIMILE)) SHALL IN ALL RESPECTS BE CONSIDERED EQUIVALENT TO AN ORIGINAL OF SUCH DOCUMENT. BY SIGNING BELOW, CLIENT REPRESENTS AND WARRANTS THAT CLIENT'S NAME AS SET FORTH IN THE SIGNATURE BLOCK BELOW IS CLIENT'S EXACT LEGAL NAME AND THE INFORMATION IDENTIFYING CLIENT'S STATE OF ORGANIZATION IS TRUE, ACCURATE AND COMPLETE IN ALL RESPECTS.

Accepted by:
Miami-Dade County
For or as Client

INTERNATIONAL BUSINESS MACHINES CORPORATION
For or as IBM:

By: _____
Authorized Signature

By: Emily B. Loos
Authorized Signature

Name (Type or Print)

Emily B. Loos

Name (Type or Print)

Title

Client Executive

Title

Date

September 29, 2020

Date

State of Organization

Florida

APPENDIX B**PRICE SCHEDULE**

The Pricing schedule for this Agreement is as follows:

Hardware	1,551,426.78
Software	598,794.00
Maintenance	306,156.02
Professional Services	516,254.57
Total	2,969,631.37

At your request, we are providing an option for an installment payment plan for this purchase. The proposed payment plan for this package would allow the County to spread the cost of this project over five fiscal years without additional costs. Detailed in the latter portion of this Appendix B is a set of three (3) documents that are required for execution by the County that would effectuate this payment plan, which are titled as follow:

- Document 1 – Installment Payment Supplement
- Document 2 – Installment Payment Schedule
- Document 3 – Certificate(s) of Acceptance

By executing the Composite Signature Page in Attachment 4, the County is executing the Installment Payment Agreement in Attachment 4 and Documents 1 and 2 listed above. Document 3 Certificate(s) of Acceptance will need to be executed separately.

The Professional Services are detailed in Appendix A "Scope of Services".

The AIX, PowerVM and PowerHA software are all licensed on a full capacity processor core basis so that there is no limitation on how many copies or what LPAR you want to run them in. For example, if you start with an LPAR that does not have the requirement for High Availability today you would not load the PowerHA software into that LPAR. If the workload changes and the application needs to have unattended, automated failover to the other system, you can simply install the software on a new LPAR with no additional charge.

Spectrum Scale has changed to be licensed on a per terabyte basis with an unlimited number of server and client LPAR access. This is a change from the current processor based license model used on the Model 795s. The new licensing model simplifies this as you only determine the size of the Spectrum Scale file system and you do not have to manage the licensing of the LPARs reading and writing the data. This solution includes the licensing for one hundred terabytes of Spectrum Scale file systems.

The IBM Workload Scheduler software is licensed through the PassPort Advantage (PPA) agreement and not this contract. The number of licenses that the County owns and is using on the current Model 795s will be used on the new Model 980s. No additional licenses are required.

Optional Purchases and Services

Additional products related to the Solution for which the Contractor is the proprietary provider or authorized reseller/distributor may be purchased during the term of the Contract. In the event the County wishes to purchase such additional items, in addition to those listed below, a County representative will contact the Contractor to obtain a price proposal for the additional items. In the event that the County opts to proceed with the purchase, an amendment will be mutually agreed upon by the parties and executed in writing.

Description	Year 1	Year 2	Year 3	Year 4	Year 5
Additional Processor	3,000	3,000	3,000	3,000	3,000
Additional Memory per GB	50	50	50	50	50
Additional SAN Connectivity Cards	3,309	3,309	3,309	3,309	3,309
Additional Network Connectivity Cards	2,319	2,319	2,319	2,319	2,319
Software Cost for Expansion	5,179	5,179	5,179	5,179	5,179
Hardware Maintenance for Expansion	0	TBD	TBD	TBD	TBD
Software Maintenance for Expansion	0	0	0	TBD	TBD

Services	Hourly Rate
Project Manager (Skill Level I - V)	\$ 126 - \$ 343
System Administrator (Skill Level I - V)	\$ 131 - \$ 219
Database Administrator (Skill Level I - V)	\$ 130 - \$ 302
On-Site Training (Per Day)	Per Special Class
Other - Technical Systems and Solution Specialist Skill V	\$282
Other - Consultant (Skill Level I - V)	\$ 224 - \$ 363
Other - Project Coordinator (Skill Level I - V)	\$ 103 - \$ 146

Document 1 – MDC IPA Supplement

INTERNATIONAL BUSINESS MACHINES CORPORATION
Installment Payment Supplement

Supplement No.: 081779

Associated Supplement: n/a
 Amendment/ Addendum No.: n/a

Installment Payment Agreement No.: LP004148292

County Name and Address:
 Miami-Dade County
 111 NW 1st ST
 Miami, FL. 33128

IBM Name and Address:
 International Business Machines Corporation
 7100 Highlands Parkway
 Smyrna, GA 30082

County Reference No.:

This Supplement to the above referenced Installment Payment Agreement (“Agreement”) is executed between Miami-Dade County (“County”) and International Business Machines Corporation (“IBM”).

Payment Period means the period for which a Payment is due and payable (e.g., Month, Quarter).
 Payment Period is: Annual

Quote Validity Date is the date by which the executed Supplement must be returned to IBM
 Quote Validity Date is: 12/31/2020
 Supplier: International Business Machines Corporation

TAXABLE FINANCING TRANSACTION(S)						
Ref No.	Qty.	Property Descripti	Original Term (months)	Amount Financed (\$)	Interest Rate (%)	Planned Commencement Month
1	2	4586 COD Elastic Capacity on Demand	60	24,768.00	0.00	December 2020
10	2	7014 T42 RS/6000 System Rack	60	17,470.80	0.00	December 2020
11	1	7063 CR1 Hardware Management Console	60	10,398.26	0.00	December 2020
12	1	7316 TF4 FLAT PANEL CONSOLE KIT	60	4,496.70	0.00	December 2020
13	2	9080 M9S IBM POWER SYSTEM E980	60	1,494,293.02	0.00	December 2020
14	2	5648 F47 XL C/C++ FOR AIX W 3Y.RG S&S	60	4,240.00	0.00	December 2020
15	2	9SW1 IBM SOFTWARE	60	57,364.00	0.00	December 2020
16	2	5662 H23 IBM POWERHA STANDARD EDITION V	60	77,424.00	0.00	December 2020
17	2	5692 A6P CSM FOR AIX, V1.7	60	700.00	0.00	December 2020
18	2	5765 CD3 IBM AIX 7.2 ENTERPRISE EDITION	60	102,000.00	0.00	December 2020
19	2	5765 H39 IBM POWERHA SYSTEMMIRROR STAND	60	175,200.00	0.00	December 2020
20	2	9SW1 IBM SOFTWARE	60	10,900.00	0.00	December 2020
21	2	5773 AEZ SOFTWARE MAINTENANCE FOR AIX E	60	96,336.00	0.00	December 2020
22	2	5773 PVE POWERVM ENTERPRISE 3 YR SWMA V	60	46,224.00	0.00	December 2020
23	2	5773 PXI PROACTIVE SUPPORT FOR AIX/IBM	60	27,495.00	0.00	December 2020
24	1	5773 RS3 MCAHCONTRL REM SPT AGR HMC 3YR	60	911.00	0.00	December 2020
25	1	9MT3 IBM PREPAID MAINTENANCE	60	303,156.02	0.00	December 2020
26	1	9GT2 GTS PREPAID GTS SERVICES	60	516,254.57	0.00	December 2020
				2,969,631.37		

International Business Machines Corporation
Installment Payment Supplement

Supplement No.: 081779

SPECIAL TERMS AND CONDITIONS:

- 1) As indicated on the Payment Schedule, this installment payment transaction consists of five (5) equal Installment Payments with a zero percent interest component. Title shall pass to County as per Section 7.1 of the Agreement.

- 2) County shall be deemed to represent, covenant and warrant for the benefit of IBM as follows:
 - (a) County has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the Installment Payments scheduled to come due during the current budget year under the Installment Payment Supplement and to meet its other obligations for the current budget year and such funds have not been expended for other purposes.
 - (b) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default or a Non-appropriation Event (as such terms are defined in the Agreement) exists at the date hereof with respect to this Installment Payment Supplement or any other Installment Payment Supplements under the Agreement.
 - (c) County represents and warrants that the Property is essential to the proper, efficient and economic functioning of County or to the services that County provides; and County has immediate need for and expects to make immediate use of substantially all of the Property, which need is not temporary or expected to diminish in the foreseeable future. The parties acknowledge that this representation by the County does not effect or hinder the County's ability to nonappropriate as provided in Section 6.6 of the Agreement.
 - (d) This section intentionally left blank.
 - (e) As of the date hereof, no litigation is pending or threatened against County in any court (i) seeking to restrain or enjoin the delivery of the Agreement or this Installment Payment Supplement or of other agreements similar to the Agreement; (ii) questioning the authority of County to execute the Agreement or this Installment Payment Supplement, or the validity of the Agreement or this Installment Payment Supplement (iii) questioning the constitutionality of any statute, or the validity of any proceedings, authorizing the execution of the Agreement and this Installment Payment Supplement; or (iv) affecting the provisions made for the payment of or security for the Agreement and this Installment Payment Supplement.

ADDITIONAL TERMS AND CONDITIONS:

“Planned Commencement Month” means for the Installment Payment Transaction to commence, the Commencement Date (as defined in the Agreement) must be prior to the end of the month of “Planned Commencement Month” indicated above unless otherwise approved by IBM .

The Payment Schedule for this Supplement sets forth the scheduled Installment Payments under this Supplement. The Commencement Date for this Supplement is set forth in the Payment Schedule.

With respect to Financed Items consisting of prepaid maintenance and prepaid services, County accepts the terms of the prepaid maintenance and prepaid services and agrees to look solely to the maintenance and services provider for provision of such maintenance and services in accordance with the terms of the contracts with the maintenance and services provided for said maintenance and services. Acceptance for purposes of a Supplement shall be the date of acceptance by County in the Certificate of Acceptance.

International Business Machines Corporation
Installment Payment Supplement

Supplement No.: 081779

For a Taxable Financing Transactions, the following provisions of the Installment Payment Agreement shall not be applicable: (i) Part 3, paragraph (f), (ii) Section entitled Arbitrage Certifications.

IBM reserves the right to reject any invoice that is: (i) not for information technology Equipment or related software or services, or (ii) dated more than 90 days prior to the date IBM receives authorization from County to finance..

Capitalized terms set forth in this Supplement or in the attachments, but not defined herein or therein, shall have the meaning set forth in the Installment Payment Agreement. The complete terms and conditions of the Installment Payment Agreement are incorporated by reference.

In addition to a Supplement, and as a requirement to entering into of Installment Payment Supplement, County shall provide in completed and executed form, acceptable to IBM , the additional documents attached to this Supplement that may include:

(a) Payment Schedule for a Supplement, (b) Certificate of Acceptance.

The Agreement referenced above shall be incorporated herein by reference. County hereunder shall be bound to the terms and conditions of the Agreement as County. The Agreement, this Supplement and any applicable attachments or addenda are the complete, exclusive statement of the parties with respect to the subject matter herein. These documents supersede any prior oral or written communications between the parties. By signing below, County represents and warrants that County's name as set forth in the signature block below is County's exact legal name and the information identifying County's state of organization is true, accurate and complete in all respects. By signing below, both parties agree to the terms represented by this Agreement as it may be amended or modified. Delivery of an executed copy of any of these documents by facsimile or other reliable means shall be deemed to be as effective for all purposes as delivery of a manually executed copy. County acknowledges that we may maintain a copy of these documents in electronic form and agrees that copy reproduced from such electronic form or by any other reliable means (for example, photocopy, image or facsimile) shall in all respects be considered equivalent to an original.

Agreed to:
MIAMI-DADE COUNTY

By: _____

Authorized Signature Name (type or print): _____

Title: _____

Date: _____

Email Address: _____

Agreed to:
International Business Machines Corporation

By: _____

Authorized Signature Name (type or print): _____

Title: _____

Date: _____

Document 2 – Payment Schedule

International Business Machines Corporation

PAYMENT SCHEDULE

County Name: Miami-Dade County
Installment Payment Supplement No.: 081779

Commencement Date

The Commencement Date shall be: (i) for Equipment, the date of the Supplier's Invoice, provided County does not notify IBM of County's rejection of the Equipment within ten (10) days following County's receipt of the Equipment; (ii) for software, date of the Supplier's Invoice; or (iii) for services or if IBM requires County's acceptance, the date specified by County on a County executed certificate of acceptance ("Acceptance Date"), in form and satisfactory to IBM ("COA").

The Installment Payment Due Dates listed below are based on the Commencement Date being a date on or before the end of the Planned Commencement Month.

Payment Schedule

Total Principal Amount: \$2,969,631.37
Interest Rate for Schedule: 0.00%
Prepayment Fee Rate: n/a

Payment No.	Installment Payment Due Dates	Installment Payments (\$)	Principal Component (\$)	Interest Component (\$)	Prepayment Price (After Making Payment for Said Due Date) (\$)
1	1/16/2021	593,926.26	593,926.26	0.00	2,375,705.11
2	1/16/2022	593,926.26	593,926.26	0.00	1,781,778.83
3	1/16/2023	593,926.26	593,926.26	0.00	1,187,852.54
4	1/16/2024	593,926.26	593,926.26	0.00	593,926.26
5	1/16/2025	593,926.26	593,926.26	0.00	0.00

International Business Machines Corporation

PAYMENT SCHEDULE

County Name: Miami-Dade County
Installment Payment Supplement No.: 081779

QTY	Product Description	Serial No. / Alteration Reference No.	Principal Amt (\$)
2	4586 COD Elastic Capacity on Demand		24,768.00
2	7014 T42 RS/6000 System Rack		17,470.80
1	7063 CR1 Hardware Management Console		10,398.26
1	7316 TF4 FLAT PANEL CONSOLE KIT		4,496.70
2	9080 M9S IBM POWER SYSTEM E980		1,494,293.02
2	5648 F47 XL C/C++ FOR AIX W 3Y.RG S&S		4,240.00
2	9SW1 IBM SOFTWARE		57,364.00
2	5662 H23 IBM POWERHA STANDARD EDITION V		77,424.00
2	5692 A6P CSM FOR AIX, V1.7		700.00
2	5765 CD3 IBM AIX 7.2 ENTERPRISE EDITION		102,000.00
2	5765 H39 IBM POWERHA SYSTEMMIRROR STAND		175,200.00
2	9SW1 IBM SOFTWARE		10,900.00
2	5773 AEZ SOFTWARE MAINTENANCE FOR AIX E		96,336.00
2	5773 PVE POWERVM ENTERPRISE 3 YR SWMA V		46,224.00
2	5773 PXI PROACTIVE SUPPORT FOR AIX/IBM		27,495.00
1	5773 RS3 MCAHCONTRL REM SPT AGR HMC 3YR		911.00
1	9MT3 IBM IBM PREPAID MAINTENANCE		303,156.02
1	9GT2 GTS PREPAID GTS SERVICES		516,254.57
Totals:			2,969,631.37

County: MIAMI-DADE COUNTY

By: _____

Authorized Signature Name (type or print): _____

Title: _____

Date: _____

Email Address: _____

Document 4 – CERTIFICATE OF ACCEPTANCE
International Business Machines Corporation
Certificate of Acceptance

[ONLY FOR SERVICES ITEMS FINANCED]

Supplement No: 081779
 Certificate of Acceptance No.: 081779001

Page 1 of 2

County Name and Address:

Miami-Dade County
 111 NW 1st ST
 Miami, FL 33128

IBM Name and Address:

International Business Machines Corporation
 7100 Highlands Parkway
 Smyrna, GA 30082
 cst@br.ibm.com

The County certifies and agrees that the information contained in the following table(s), which includes Property description and Amount Financed, is correct and relates to Property financed under the terms and conditions of the above referenced Supplement with International Business Machines Corporation.

Installed at:
5680 SW 87th Avenue
Miami, FL 33173

TRANSACTION SUMMARY:

Customer Reference:
 Payment Period: Annual
 Payment Type: Advance

TAXABLE FINANCING TRANSACTION(S)

Qty	Property Description	Original Term (months)	Amount Financed (\$)	Interest Rate (%)	Annual Installment Payments (\$)
1	9MT3 IBM Prepaid Maintenance	60	303,156.02	0.00	60,631.20
1	9GT2 GTS Prepaid GTS Services	60	516,254.57	0.00	103,250.91
	TOTAL		819,410.59		163,882.11

County represents and certifies that County has accepted the items listed above or itemized on an attachment ("Accepted Item(s)") to this Certificate of Acceptance ("COA") on the date indicated below. County authorizes us to pay County's supplier for the Accepted Item(s). Amounts due under the Agreement shall commence upon the date County indicates below unless we have otherwise noted on the Supplement.

County represents and certifies that our direct payment to County's supplier for the Accepted Item(s) will be in full compliance with any and all relevant state laws and regulations or any other legal requirements relating to County's procurement or appropriation activities.

International Business Machines Corporation
Certificate of Acceptance

[ONLY FOR SERVICES ITEMS FINANCED]

Supplement No: 081779
 Certificate of Acceptance No.: 081779001

Page 2 of 2

Delivery of an executed copy of this COA by facsimile, email or any other reliable means shall be deemed to be as effective for all purposes as delivery of a manually executed copy. County understands that we may maintain a copy of this COA in electronic form and agrees that a copy produced from such electronic form or by any other reliable means (for example, photocopy, image or facsimile) shall in all respects be considered equivalent to an original. By signing below, County represents and warrants that County’s name as set forth in the signature block below is County’s exact legal name and the information identifying County’s state of organization is true, accurate and complete in all respects.

County is a customer under the Installment Payment Agreement referenced above (“Agreement”) with International Business Machines Corporation. By executing the above-referenced Supplement, County represents and certifies that County has accepted the Property supplied directly by International Business Machines Corporation (“IBM”) or by another supplier, and listed in the Supplement by the date indicated below. County authorizes International Business Machines Corporation to pay such supplier for the Property.

Supplier Information

Supplier’s Name	Invoice Number	Invoice Date	Amount Financed
International Business Machines Corporation			

_____ (MM/DD/YYYY) (“Acceptance Date” for Accepted Item(s))

By _____
 Authorized signature

Name (type or print): _____

Title (type or print): _____

County shall return this executed COA to International Business Machines Corporation by mail, in an email, or by facsimile within ten (10) days of Acceptance Date.

Annex A

Federal Bureau of Investigation's (FBI) CJIS Security Addendum

Annex B

CJIS Security Awareness Test

Annex A
FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES
SECURITY ADDENDUM

The goal of this document is to augment the CJIS Security Policy to ensure adequate security is provided for criminal justice systems while (1) under the control or management of a private entity or (2) connectivity to FBI CJIS Systems has been provided to a private entity (contractor). Adequate security is defined in Office of Management and Budget Circular A-130 as “security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information.”

The intent of this Security Addendum is to require that the Contractor maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

This Security Addendum identifies the duties and responsibilities with respect to the installation and maintenance of adequate internal controls within the contractual relationship so that the security and integrity of the FBI's information resources are not compromised. The security program shall include consideration of personnel security, site security, system security, and data security, and technical security.

The provisions of this Security Addendum apply to all personnel, systems, networks and support facilities supporting and/or acting on behalf of the government agency.

Definitions

- 1.01 Contracting Government Agency (CGA) - the government agency, whether a Criminal Justice Agency or a Noncriminal Justice Agency, which enters into an agreement with a private contractor subject to this Security Addendum.
- 1.02 Contractor - a private business, organization or individual which has entered into an agreement for the administration of criminal justice with a Criminal Justice Agency or a Noncriminal Justice Agency.
- 2.00 Responsibilities of the Contracting Government Agency
 - 2.01 The CGA will ensure that each Contractor employee receives a copy of the Security Addendum and the CJIS Security Policy and executes an acknowledgment of such receipt and the contents of the Security Addendum. The signed acknowledgments shall remain in the possession of the CGA and available for audit purposes. The acknowledgement may be signed by hand or via digital signature (see glossary for definition of digital signature).
- 3.00 Responsibilities of the Contractor
 - 3.01 The Contractor will maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed and all subsequent versions), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

**FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES
SECURITY ADDENDUM**

4.00 Security Violations

4.01 The CGA must report security violations to the CJIS Systems Officer (CSO) and the Director, FBI, along with indications of actions taken by the CGA and Contractor.

4.02 Security violations can justify termination of the appended agreement.

4.03 Upon notification, the FBI reserves the right to:

a. Investigate or decline to investigate any report of unauthorized use;

b. Suspend or terminate access and services, including telecommunications links. The FBI will provide the CSO with timely written notice of the suspension. Access and services will be reinstated only after satisfactory assurances have been provided to the FBI by the CJA and Contractor. Upon termination, the Contractor's records containing CHRI must be deleted or returned to the CGA.

5.00 Audit

5.01 The FBI is authorized to perform a final audit of the Contractor's systems after termination of the Security Addendum.

6.00 Scope and Authority

6.01 This Security Addendum does not confer, grant, or authorize any rights, privileges, or obligations on any persons other than the Contractor, CGA, CJA (where applicable), CSA, and FBI.

6.02 The following documents are incorporated by reference and made part of this agreement: (1) the Security Addendum; (2) the NCIC Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20. The parties are also subject to applicable federal and state laws and regulations.

6.03 The terms set forth in this document do not constitute the sole understanding by and between the parties hereto; rather they augment the provisions of the CJIS Security Policy to provide a minimum basis for the security of the system and contained information and it is understood that there may be terms and conditions of the appended Agreement which impose more stringent requirements upon the Contractor.

6.04 This Security Addendum may only be modified by the FBI, and may not be modified by the parties to the appended Agreement without the consent of the FBI.

6.05 All notices and correspondence shall be forwarded by First Class mail to:

Assistant Director
Criminal Justice Information Services Division, FBI
1000 Custer Hollow Road
Clarksburg, West Virginia 26306

Annex B

FEDERAL BUREAU OF INVESTIGATION CRIMINAL JUSTICE INFORMATION SERVICES SECURITY ADDENDUM

CERTIFICATION

I hereby certify that I am familiar with the contents of (1) the Security Addendum, including its legal authority and purpose; (2) the NCIC Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20, and agree to be bound by their provisions.

I recognize that criminal history record information and related data, by its very nature, is sensitive and has potential for great harm if misused. I acknowledge that access to criminal history record information and related data is therefore limited to the purpose(s) for which a government agency has entered into the contract incorporating this Security Addendum. I understand that misuse of the system by, among other things: accessing it without authorization; accessing it by exceeding authorization; accessing it for an improper purpose; using, disseminating or re-disseminating information received as a result of this contract for a purpose other than that envisioned by the contract, may subject me to administrative and criminal penalties. I understand that accessing the system for an appropriate purpose and then using, disseminating or re-disseminating the information received for another purpose other than execution of the contract also constitutes misuse. I further understand that the occurrence of misuse does not depend upon whether or not I receive additional compensation for such authorized activity. Such exposure for misuse includes, but is not limited to, suspension or loss of employment and prosecution for state and federal crimes.

Printed Name/Signature of Contractor Employee

Date

Printed Name/Signature of Contractor Representative

Date

Organization and Title of Contractor Representative

Exhibit 1

Security Requirements

MIAMI-DADE CORRECTIONS AND REHABILITATION DEPARTMENT

Non-Staff/Volunteer Application Checklist

Applicant Name : _____ **DOB:** _____

The following items are needed before the volunteer application is processed. Incomplete or illegible volunteer applications will be returned unprocessed until the necessary information is obtained:

- A copy of the applicant's valid and legible driver licenses or Florida Identification Card
- A current reference letter of good standing from a church or organization
- Completed applications (no blank areas)
- Signed Volunteers and Contractual Personnel Regulations and Application

A volunteer applicant may be denied the opportunity to volunteer services with MDCR for any of the following reasons:

- a. An open misdemeanor or felony charge(s);
- b. A conviction or imprisonment in a federal or state institution(s), county jail(s), probation, parole or work release within 2 years prior to the date of application;
- c. A conviction of misdemeanor or felony charge(s) relating to a violation of Florida Statutes within 5 years prior to the date of application:

FS 393.135	Developmental Disabilities-Sexual Misconduct prohibited; reporting required; penalties;
FS 394.4593	Mental Health-Sexual Misconduct prohibited; reporting required; penalties;
FS 787.025	Luring or Enticing a Child;
FS 796.03	Procuring persons under the age of 18 for prostitution;
FS 800.04	Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
FS 817.034	Florida Communications Fraud Act;
FS 825.1025	Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person;
FS 827.071	Sexual performance by a child; penalties;
FS 847.0133	Protection of minors; prohibition of certain acts in connection with obscenity; penalty.
FS 847.0135	Computer pornography; traveling to meet minor; penalties;
FS 847.0145	Selling or buying of minors; penalties;

MIAMI-DADE CORRECTIONS AND REHABILITATION DEPARTMENT

Non-Staff/Volunteer Application Checklist

FS 893.135	Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking;
FS 916.1075	Mentally deficient and Mentally ill Defendants-Sexual misconduct prohibited; reporting required; penalties;
FS 794	Sexual Battery
FS 893	Drug Abuse Prevention and Control
FS 907.041	Pretrial detention and release;

- d. The Director or designee determines the applicant is a security risk or a possible disruption to departmental operations.

Checklist Verified By:

Bureau/Facility Employee Name	Date	Bureau/Facility Employee Signature
-------------------------------	------	------------------------------------

MIAMI-DADE CORRECTIONS AND REHABILITATION DEPARTMENT

Volunteers and Contractual Personnel Regulations and Application

STEP 1: Applicant shall indicate the respective service bureau/unit and facility. Submit only 1 application per facility.

Chaplaincy Services Unit	<input type="checkbox"/> Faith Based Counselor <input type="checkbox"/> Worship Service Leader <input type="checkbox"/> Other: _____
Rehabilitative Services Unit	<input type="checkbox"/> Counselor <input type="checkbox"/> AA Counselor <input type="checkbox"/> NA Counselor <input type="checkbox"/> Mentor <input type="checkbox"/> DSPTS Instructor <input type="checkbox"/> Licensed Professional <input type="checkbox"/> Family Counselor <input type="checkbox"/> Other: _____
Contractor	<input type="checkbox"/> FMB <input type="checkbox"/> ISB <input type="checkbox"/> Other: _____
Facility	<input type="checkbox"/> BCP <input type="checkbox"/> MWDC <input type="checkbox"/> PTDC <input type="checkbox"/> TGK <input type="checkbox"/> TTC <input type="checkbox"/> WDC <input type="checkbox"/> Other

STEP 2: Applicant shall complete the following questions, read, and sign the Volunteers and Contractual Personnel Regulations Application.

In accordance with Florida Statute 119.071, "General exemption from inspection or copying of public records", a public agency in Florida may request a Social Security Number (SSN) from an individual only when it is specifically authorized by law to do so, or imperative for the performance of that agency's duties and responsibilities. The decision to provide your SSN is your option. However, declining to provide the SSN may delay the processing of your application/request/documents(s). If you provide your SSN, Miami-Dade Corrections and Rehabilitation Department (MDCR) will use it for identification and verification purposes only.

PERSONAL INFORMATION

Name: _____ DOB: _____

Maiden Name: _____ Sex: _____ Race: _____

Home Address: _____ Length of Time: _____

City: _____ State: _____ Zip Code: _____

Driver License/Motor Vehicle State ID #: _____ Social Security #: _____

Telephone #: _____ Cell #: _____ Email: _____

Referred by: _____

Employer Name: _____ Length of Time: _____

Employer Address: _____

City: _____ State: _____ Zip Code: _____

Employer Phone #: _____ Job Title: _____

Supervisor Name: _____ Supervisor Phone #: _____

What service will you perform? _____

Number of visits per week: _____ On what days? _____ At what times? _____

Special Skills/Training: _____

Languages Spoken: _____

Have you ever been arrested or detained? _____ If yes, please provide the date(s) and explain the circumstances and outcomes: _____

MIAMI-DADE CORRECTIONS AND REHABILITATION DEPARTMENT

Volunteers and Contractual Personnel Regulations and Application

Have you ever been convicted of a crime? _____ If yes, please provide the date(s) and charge(s):

Applicant Name (Print)

Signature

Date

STEP 3: Applicant must submit the following documentation with the application.

Services Volunteers:

- A dated letter of recommendation with the organization's letterhead from their pastor, priest, rabbi, or house of worship leader indicating that they have been a member in good standing for a minimum of 1 year.
- Submit an acceptable copy of identification (valid driver's license or motor vehicle state identification card.)

Rehabilitation/Social Services Volunteers:

- Letter identifying themselves, their position, and the service to be provided.
- Licensed professionals must attach a copy of their license/certificate credentials if volunteering in a professional capacity.

STEP 4: MDCR staff acknowledges reviewing the application for completeness and ensuring the required documentation is attached by signing below.

Applicant Interviewed and Form Verified by:

Staff Name (Print)

Title/Badge #

Signature

Date

STEP 5: MDCR staff acknowledges completing a criminal background check by signing below.

Criminal Background Check Conducted by:

Staff Name (Print)

Title/Badge #

Signature

Date

STEP 6: MDCR staff assigns Pass Number

Pass Number:

Pass Color:

Date Issued:

Contractual personnel/vendors only- Once the application has received final approval/disapproval, it must be hand-delivered to Program Services Division; MDCR Headquarter.

Volunteers and individuals contracted to work in a facility within the Miami-Dade Corrections and Rehabilitation Department (MDCR) shall adhere to the following Rules and Regulations at all times.

Facility Supervisor: _____ Approve Disapprove Date: _____

Security and Internal Affairs Captain: _____ Approve Disapprove Date: _____

MIAMI-DADE CORRECTIONS AND REHABILITATION DEPARTMENT

Volunteers and Contractual Personnel Regulations and Application

1. Volunteers and contractual personnel shall not give anything to an inmate unless authorized by the Facility/Bureau Supervisor in writing.
2. Volunteers and contractual personnel shall not provide personal favors to any inmate, including preferential treatment to family members in the facility (nepotism).
3. Volunteers and contractual personnel shall treat inmates with dignity and respect.
4. Sexual relations with inmates, regardless of consensual status, are prohibited and subject to administrative and criminal sanctions.
5. Volunteers and contractual personnel shall abide by the rules and regulations of the facility and MDCR.
6. Volunteers and contractual personnel shall be properly dressed when entering a facility.
7. No food, newspapers, or any other outside items shall be allowed into the facility unless prior approval is given by the Facility/Bureau Supervisor.
8. If any volunteer or contractual personnel have questions as to conduct, within the facility, he/she shall contact the Facility/Bureau Supervisor, or the Shift Supervisor/Shift Commander.
9. Any problems with an inmate shall be reported to an MDCR staff member, Shift Supervisor/Shift Commander or Facility/Bureau Supervisor.
10. Volunteers and contractual personnel will be given a tour of the facility to familiarize the individual with the Shift Supervisor/Shift Commander area, evacuation routes, alarm pull stations, and locations of staff telephones.
11. Volunteers and contractual personnel shall not smoke in the facility, nor shall they introduce or give any tobacco products (cigarette, cigar, chewing tobacco, marijuana, including lighters, and matches) to an inmate(s).
12. There shall be no proselytizing (converting inmates from one belief to another) for any specific churches or denominations.
13. There shall be no teaching of church ordinances or sacraments without prior approval of the Chaplain's office.
14. Non-staff/volunteers shall not accept telephone calls from inmates at their personal residence or telephone.

I have been informed of Miami Dade Corrections and Rehabilitation Department's zero tolerance policy regarding: sexual assault, sexual harassment, "consensual sex" with correctional staff, and inmate-inmate sexual assault incorporated into the Prison Rape Elimination Act (PREA) adopted by the US Congress on September 4, 2003. I have been provided a copy of the MDCR Training Bureau's PREA Facility Based Training pamphlet along with that of Public Law 108-79 related to such. I will abide by all policies, directives, rules and regulations including those in reference to confidentiality of records and other privileged information, and the following law regarding contraband:

FS 951.22 County Detention Facilities: Contraband Articles - (1) It is unlawful, except through regular channels as duly authorized by the sheriff or officer in charge, to introduce into or possess upon the grounds of any county detention facility as defined in s. 951.23 or to give to or receive from any inmate of any such facility wherever said inmate is located at the time or to take or to attempt to take or send there from any of the following articles which are hereby declared to be contraband for the purposes of this act, to wit: Any written or recorded communication; any currency or coin; any article of food or clothing; any tobacco products as defined in s. 210.25(11); any cigarette as defined in s. 210.01(1); any cigar; any intoxicating beverage or beverage which causes or may cause an intoxicating effect; any narcotic, hypnotic, or excitative drug or drug of any kind or nature, including nasal inhalators, sleeping pills, barbiturates, and controlled substances as defined in s. 893.02(4); any firearm or any instrumentality customarily used or which is intended to be used as a dangerous weapon; and any instrumentality of any nature that may be or is intended to be used as an aid in effecting or attempting to effect an escape from a county facility. (2) Whoever violates subsection (1) shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

I understand that if I have questions, at any time, regarding this policy, I will consult with the Department's Project Manager or representative. Please read the policy carefully to ensure that you understand the policy before signing this document.

I, the undersigned, have read and understand the rules and regulations of MDCR and agree to fully adhere to them.

Applicant Name (Print)

Signature

Date