



**DEPARTMENTAL INPUT**  
**CONTRACT/PROJECT MEASURE ANALYSIS AND RECOMMENDATION**

Rev 1

Contract/Project History of Previous Purchases For Previous Three (3) Years Check Here <u>X</u> if this is a New Contract/Purchase with no Previous History			
<u>EXISTING</u>		<u>2<sup>ND</sup> YEAR</u>	
<u>3<sup>RD</sup> YEAR</u>			
Contractor:			
Small Business Enterprise:			
Contract Value:			
Comments:			
Continued on another page (s): <input type="checkbox"/> Yes <input type="checkbox"/> No			
Notes: Currently there are only a few companies who have been identified by MDAD that can meet the requirements of the RFP as set by the U.S. Customs and Border Protection Department requirements.			

**RECOMMENDATIONS**

SBE	Set-Aside	Sub-Contractor Goal	Bid Preference	Selection Factor
		%		
		%		
		%		
		%		

Basis of Recommendation:

Signed: \_\_\_\_\_

Date to SBD: \_\_\_\_\_

Date Returned to DPM: \_\_\_\_\_

***This document is a draft of a planned solicitation and is subject to change without notice.***



**REQUEST FOR PROPOSALS (RFP) NO. 00118  
FOR  
AUTOMATED PASSPORT CONTROL KIOSKS**

**ISSUED BY MIAMI-DADE COUNTY:**

Internal Services Department, Procurement Management Services Division  
for the  
Miami-Dade Aviation Department

**COUNTY CONTACT FOR THIS SOLICITATION:**

Josh Brown, Procurement Contracting Officer  
111 NW 1<sup>st</sup> Street, Suite 1300, Miami, Florida 33128  
Telephone: (305) 375-4725  
E-mail: [joshbro@miamidade.gov](mailto:joshbro@miamidade.gov)

**PROPOSAL RESPONSES DUE:  
INSERT DATE AND TIME**

**Electronic proposal responses to this RFP are to be submitted through a secure mailbox at BidSync until the date and time as indicated in this document.** It is the sole responsibility of the Proposer to ensure its proposal reaches BidSync before the Solicitation closing date and time. There is no cost to the Proposer to submit a proposal in response to a Miami-Dade County solicitation via BidSync. Electronic proposal submissions may require the uploading of electronic attachments. The submission of attachments containing embedded documents or proprietary file extensions is prohibited. All documents should be attached as separate files. All proposals received and time stamped through the County's third party partner, BidSync, prior to the proposal submittal deadline shall be accepted as timely submitted. The circumstances surrounding all proposals received and time stamped after the proposal submittal deadline will be evaluated by the procuring department in consultation with the County Attorney's Office to determine whether the proposal will be accepted as timely. Proposals will be opened promptly at the time and date specified. The responsibility for submitting a proposal on or before the stated time and date is solely and strictly the responsibility of the Proposer. The County will in no way be responsible for delays caused by technical difficulty or caused by any other occurrence. All expenses involved with the preparation and submission of proposals to the County, or any work performed in connection therewith, shall be borne by the Proposer(s).

A Proposer may submit a modified proposal to replace all or any portion of a previously submitted proposal up until the proposal due date. The County will only consider the latest version of the proposal. For competitive bidding opportunities available, please visit the County's Internal Services Department website at: <http://www.miamidade.gov/procurement/>.

Requests for additional information or inquiries must be made in writing and submitted using the question/answer feature provided by BidSync at [www.bidsync.com](http://www.bidsync.com). The County will issue responses to inquiries and any changes to this Solicitation it deems necessary in written addenda issued prior to the proposal due date (see addendum section of BidSync Site).



Proposers who obtain copies of this Solicitation from sources other than through BidSync risk the possibility of not receiving addenda and are solely responsible for those risks.

**1.0 PROJECT OVERVIEW AND GENERAL TERMS AND CONDITIONS**

**1.1 Introduction**

Miami-Dade County, hereinafter referred to as the County, as represented by the Miami-Dade Aviation Department is soliciting proposals for the purchase of Automated Passport Control (APC) Kiosks, capable of processing both international and domestic passengers to be located in designated United States Customs and Border Protection areas throughout the Miami International Airport.

Proposers shall be experienced in providing APC Kiosks, software licenses, configuration, installation, and maintenance support services. The successful Proposer will be required to install, configure, implement, and train staff on the use of the new APC kiosks proposed and provide ongoing maintenance and support services throughout the resultant contract term.

The County anticipates awarding a contract for an initial five (5) year period, with one (1) five-year option-to-renew, at the County's sole discretion.

**The anticipated schedule for this Solicitation is as follows:**

Solicitation Issued:

Pre-Proposal Conference: See front cover for date, time, and place. Attendance is recommended but not mandatory. If you need a sign language interpreter or materials in accessible format for this event, please call the ADA Coordinator at (305) 375-2013 or email [hjwrig@miamidadegov](mailto:hjwrig@miamidadegov) at least five days in advance.

Deadline for Receipt of Questions:

Proposal Due Date: See front cover for date and time.

Evaluation Process:

Oral Presentation:

Projected Award Date:

**1.2 Definitions**

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

1. The word "Contractor" to mean the Proposer that receives any award of a contract from the County as a result of this Solicitation, also to be known as "the prime Contractor".
2. The word "County" to mean Miami-Dade County, a political subdivision of the State of Florida.
3. The word "Proposal" to mean the properly signed and completed written submission in response to this solicitation by a Proposer for the Services, and as amended or modified through negotiations.
4. The word "Proposer" to mean the person, firm, entity or organization, as stated on the Solicitation Submittal Form, submitting a response to this Solicitation.
5. The words "Scope of Services" to mean Section 2.0 of this Solicitation, which details the work to be performed by the Contractor.
6. The word "Solicitation" to mean this Request for Proposals (RFP) or Request for Qualifications (RFQ) document, and all associated addenda and attachments.
7. The word "Subcontractor" to mean any person, firm, entity or organization, other than the employees of the Contractor, who contracts with the Contractor to furnish labor, or labor and materials, in connection with the Services to the County, whether directly or indirectly, on behalf of the Contractor.

8. The words "Work", "Services", "Program", or "Project" to mean all matters and things that will be required to be done by the Contractor in accordance with the Scope of Services and the terms and conditions of this Solicitation.
9. The words "Should", "Will", "Can" to mean desirable features, but not mandatory requirements.
10. The word "MDAD" to mean the Miami-Dade Aviation Department.
11. The words "APC Kiosks" to mean the Automated Passenger Control Kiosks.
12. The word "MIA" to mean the Miami International Airport.
13. The word "CBP" to mean the United States Customs and Border Protection.
14. The words "CBP Documents" to mean U.S. CBP *Automated Passport Control Service Technical Reference Manual (Version 2, Document Number 3209000-TFM v2) in Attachment 2 and the U.S. CBP Automated Passport Control: Business Requirements (Version 15, April 2014) in Attachment 1.*

### **1.3 General Proposal Information**

The County may, at its sole and absolute discretion, reject any and all or parts of any or all responses; accept parts of any and all responses; further negotiate project scope and fees; postpone or cancel at any time this Solicitation process; or waive any irregularities in this Solicitation or in the responses received as a result of this process. In the event that a Proposer wishes to take an exception to any of the terms of this Solicitation, the Proposer shall clearly indicate the exception in its proposal. No exception shall be taken where the Solicitation specifically states that exceptions may not be taken. Further, no exception shall be allowed that, in the County's sole discretion, constitutes a material deviation from the requirements of the Solicitation. Proposals taking such exceptions may, in the County's sole discretion, be deemed nonresponsive. The County reserves the right to request and evaluate additional information from any respondent regarding respondent's responsibility after the submission deadline as the County deems necessary.

The submittal of a proposal by a Proposer will be considered a good faith commitment by the Proposer to negotiate a contract with the County in substantially similar terms to the proposal offered and, if successful in the process set forth in this Solicitation and subject to its conditions, to enter into a contract substantially in the terms herein. Proposals shall be irrevocable until contract award unless the proposal is withdrawn. A proposal may be withdrawn in writing only, addressed to the County contact person for this Solicitation, prior to the proposal due date or upon the expiration of 180 calendar days after the opening of proposals.

Proposers are hereby notified that all information submitted as part of, or in support of proposals will be available for public inspection after opening of proposals, in compliance with Chapter 119, Florida Statutes, popularly known as the "Public Record Law". The Proposer shall not submit any information in response to this Solicitation which the Proposer considers to be a trade secret, proprietary or confidential. The submission of any information to the County in connection with this Solicitation shall be deemed conclusively to be a waiver of any trade secret or other protection, which would otherwise be available to Proposer. In the event that the Proposer submits information to the County in violation of this restriction, either inadvertently or intentionally, and clearly identifies that information in the proposal as protected or confidential, the County may, in its sole discretion, either (a) communicate with the Proposer in writing in an effort to obtain the Proposer's written withdrawal of the confidentiality restriction or (b) endeavor to redact and return that information to the Proposer as quickly as possible, and if appropriate, evaluate the balance of the proposal. Under no circumstances shall the County request the withdrawal of the confidentiality restriction if such communication would in the County's sole discretion give to such Proposer a competitive advantage over other proposers. The redaction or return of information pursuant to this clause may render a proposal non-responsive.

Any Proposer who, at the time of proposal submission, is involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Proposer under federal bankruptcy law or any state insolvency law, may be found non-responsible. To request a copy of any ordinance, resolution and/or administrative order cited in this Solicitation, the Proposer must contact the Clerk of the Board at (305) 375-5126.

#### **1.4 Cone of Silence**

Pursuant to Section 2-11.1(t) of the Miami-Dade County Code, as amended, a "Cone of Silence" is imposed upon each RFP or RFQ after advertisement and terminates at the time a written recommendation is issued. The Cone of Silence prohibits any communication regarding RFPs or RFQs between, among others:

- potential Proposers, service providers, lobbyists or consultants **and** the County's professional staff including, but not limited to, the County Mayor and the County Mayor's staff, County Commissioners or their respective staffs;
- the County Commissioners or their respective staffs **and** the County's professional staff including, but not limited to, the County Mayor and the County Mayor's staff; or
- potential Proposers, service providers, lobbyists or consultants, any member of the County's professional staff, the Mayor, County Commissioners or their respective staffs **and** any member of the respective selection committee.

The provisions do not apply to, among other communications:

- oral communications with the staff of the Vendor Assistance Unit, the responsible Procurement Agent or Contracting Officer, provided the communication is limited strictly to matters of process or procedure already contained in the solicitation document;
- oral communications at pre-proposal conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meeting, public presentations made to the Board of County Commissioners during any duly noticed public meeting; or
- communications in writing at any time with any county employees, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP or RFQ documents.

When the Cone of Silence is in effect, all potential vendors, service providers, bidders, lobbyists and consultants shall file a copy of any written correspondence concerning the particular RFP or RFQ with the Clerk of the Board, which shall be made available to any person upon request. The County shall respond in writing (if County deems a response necessary) and file a copy with the Clerk of the Board, which shall be made available to any person upon request. Written communications may be in the form of e-mail, with a copy to the Clerk of the Board at [clerkbcc@miamidade.gov](mailto:clerkbcc@miamidade.gov).

All requirements of the Cone of Silence policies are applicable to this Solicitation and must be adhered to. Any and all written communications regarding the Solicitation are to be submitted only to the Procurement Contracting Officer with a copy to the Clerk of the Board. The Cone of Silence shall not apply to oral communications at pre-proposal conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meeting, public presentations made to the Board of County Commissioners during any duly noticed public meeting or communications in writing at any time with any county employee, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP, RFQ or bid documents. The Proposer shall file a copy of any written communication with the Clerk of the Board. The Clerk of the Board shall make copies available to any person upon request.

#### **1.5 Communication with Selection Committee Members**

Proposers are hereby notified that direct communication, written or otherwise, to Selection Committee members or the Selection Committee as a whole are expressly prohibited. Any oral communications with Selection Committee members other than as provided in Section 2-11.1 of the Miami-Dade County Code are prohibited.

#### **1.6 Public Entity Crimes**

Pursuant to Paragraph 2(a) of Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal for a contract to provide any goods or services to a public entity; may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work; may not submit proposals on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity;

and, may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

### **1.7 Lobbyist Contingency Fees**

- a) In accordance with Section 2-11.1(s) of the Code of Miami-Dade County, after May, 16, 2003, no person may, in whole or in part, pay, give or agree to pay or give a contingency fee to another person. No person may, in whole or in part, receive or agree to receive a contingency fee.
- b) A contingency fee is a fee, bonus, commission or non-monetary benefit as compensation which is dependent on or in any way contingent upon the passage, defeat, or modification of: 1) any ordinance, resolution, action or decision of the County Commission; 2) any action, decision or recommendation of the County Mayor or any County board or committee; or 3) any action, decision or recommendation of any County personnel during the time period of the entire decision-making process regarding such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission or a County board or committee.

### **1.8 Collusion**

In accordance with Section 2-8.1.1 of the Code of Miami-Dade County, where two (2) or more related parties, as defined herein, each submit a proposal for any contract, such proposals shall be presumed to be collusive. The foregoing presumption may be rebutted by the presentation of evidence as to the extent of ownership, control and management of such related parties in preparation and submittal of such proposals. Related parties shall mean Proposer or the principals thereof which have a direct or indirect ownership interest in another Proposer for the same contract or in which a parent company or the principals thereof of one Proposer have a direct or indirect ownership interest in another Proposer for the same contract. Proposals found to be collusive shall be rejected. Proposers who have been found to have engaged in collusion may be considered non-responsible, and may be suspended or debarred, and any contract resulting from collusive bidding may be terminated for default.

## **2.0 SCOPE OF SERVICES**

### **2.1 Introduction**

Miami-Dade County, hereinafter referred to as the County, as represented by the Miami-Dade Aviation Department (MDAD) is soliciting proposals for the purchase of Automated Passport Control (APC) Kiosks, capable of processing both international and domestic passengers to be located in designated United States Customs and Border Protection (CBP) areas throughout the Miami International Airport (MIA).

Proposers shall be experienced in providing APC Kiosks, software licenses, configuration, installation, and maintenance support services. The successful Proposer will be required to install, configure, implement, and train staff on the use of the new APC kiosks proposed and provide ongoing maintenance and support services throughout the resultant contract term.

### **2.2 Background**

Each year approximately 20 million international passengers enter the United States through MIA. The CBP currently processes passengers in person with a CBP agent or by an existing Automated Passport Control Kiosk. MDAD requires additional APC kiosks to be located in designated areas of MIA to automate processing and clearance times for arriving United States citizens and International passengers due to the continued and anticipated growth in international travel. MDAD and the CBP face multiple challenges to address extended processing and clearance times; it is anticipated that through the use of additional APC kiosks throughout MIA, the amount of time it takes for arriving passengers to clear customs will be reduced and the overall passengers experience will be improved.

## 2.3 Current Operating Environment

The Miami International Airport (MIA) currently uses 36 APC Kiosks located in Federal Inspection Service (FIS) areas in Concourse D and J. The APC Kiosks process US citizens, Canadian visitors with a V1 or B2 visas, and Visa Waiver Passengers who have filed their ESTA (Electronic System for Travel Authorization) on-line and have been in the U.S. since 2008. MIA is currently testing the LPR (Legal Permanent Resident) Passengers component and with an anticipated "Go Live" in the fall of 2014. In 2012, MIA closed the FIS in Concourse E due to CBP staffing shortages, but is evaluating the deployment of APC kiosks once CBP releases the software to process all International Arriving Passengers by 2016. The 30 kiosks in Concourse D process approximately 20,000 international passengers daily with an estimated 36% of those passengers being eligible to use the APC Kiosks. The 6 kiosks in Concourse J process approximately 7,500 passengers daily with an estimated 25% of those passengers being eligible to use the APC Kiosks. The operations, maintenance, and support services of the 36 existing kiosks are not part of this solicitation.

## 2.4 APC Kiosk Hardware and Software Requirements

The selected Proposer must have a minimum of ten (10) APC Kiosks in a single location at an airport that is compliant with the processing of Visa Waiver Passengers at the time of proposal submission of this solicitation.

The selected Proposer must fully satisfy at a minimum all performance specifications for APC Kiosks as contained in the U.S. CBP *Automated Passport Control Service Technical Reference Manual (Version 2, Document Number 3209000-TFM v2) in Attachment 2* and the U.S. CBP *Automated Passport Control: Business Requirements (Version 15, April 2014) in Attachment 1 "CBP Documents"*.

Additionally, each APC kiosk provided to MDAD shall include:

- Touch screen technology, printer, passport reader, camera, biometric fingerprint and other scanning devices, and all other peripherals integrated into a sturdy floor standing design that complies with CBP APC requirements and the Americans with Disabilities Act (ADA) handicap accessibility requirements.
- Kiosks shall be modular and scalable in design to support optional functionality.
- All hardware and software provided shall be in strict compliance with the above mentioned CBP documents and shall be able to comply with later versions of these specifications as they become available.
- MDAD reserves the right to add additional kiosks and/or locations at MIA or additional MDAD facilities throughout the term of this contract including any option-to-renew period(s). Additional kiosks must be consistent and compatible with all previous units provided. The successful Proposer shall also provide warranty documentation, inclusive of the warranty period and process for warranty services.
- Wi-Fi compatibility is highly desirable for all APC kiosks.

### 2.4.1 APC Kiosk Hardware Requirements

In addition to the CBP technical and business requirements listed above, the selected Proposer shall include the following hardware components for each APC Kiosk including but not limited to:

- Min 15" Touch Screen
- Radio Frequency Identification (RFID) Reader
- Report Server and Printer
- Lockable Maintenance Access Panel to the Kiosk and the Base
- Method to secure the kiosk (base) to the floor
- Kiosk must include status lights on the unit that are easily identified
- ADA compliant including a forward facing headphone jack
- Ability to provide audible alerts (.wav files)
- Network connectively (including CBP required interface)

- The selected Proposer shall provide and maintain a secure interface with CBP for APC in compliance with the CBP Documents and approved by MDAD.

#### **2.4.2 APC Kiosk Software Requirements**

The selected Proposer shall deliver and maintain all software and data interface requirements according with all of the CBP Interface Control Document (ICD) as amended. The selected Proposer shall provide a Kiosk Management Software (KMS) module for monitoring all kiosk activity, diagnostics, and testing through a single interface. The KMS shall be accessible by authorized users including MDAD technical support staff. The KMS shall provide a printer paper stock level and paper jam notification, kiosk online operational and offline inoperable notification to the MDAD Help Desk. The KMS must be able to generate exportable reports indicating kiosk usage, operating status, and other useful information to provide efficient technical support of all kiosks.

Additionally, the following software components are required including but not limited to:

- CBP APC Phase 1, 2, and 3 compliant (Processing US Citizens, Canadian Citizens with B1 & B2 Visas, and Visa Waiver Passengers).
- APC kiosks shall include a perpetual license provided to MDAD for an unlimited number of kiosks / users
- Facial Recognition Software
- Paper monitoring software to notify staff when paper is low or needs to be changed.
- Kiosk status and usage monitoring must be available remotely on a desktop and/or a tablet via android or IOS platform
- All SSL security licenses must be provided by the selected Proposer on behalf of MDAD inclusive within the proposed price for the length of the contract. All Interfaces through the MDAD networks shall be in compliance with MDAD standards.
- Existing GUI designs for touch screen interfaces / images shall be included within the proposal and approved by CBP and MDAD
- Other required screen images include, but are not limited to:
  - Not in Service ("Sorry") statement when the kiosk is not operational, has no access to APC applications or is experiencing other technical errors.
- Reporting function (provided daily, weekly, monthly, and annual in Microsoft Excel and other MDAD approved formats)
- Kiosk Software shall include but not be limited to the following languages: English, Spanish, German, French, Haitian Creole, Italian, Portuguese, Dutch, Chinese/Mandarin, Korean, Japanese, Danish, Finnish, and Swedish.

#### **2.5 MDAD's Role and Responsibility**

MDAD will be responsible for providing the following to the selected Proposer:

- Data and power connectivity to each individual APC location(s)
- Modifications to the flooring, to install conduit and cable routing to designated kiosk location areas as needed prior to installation
- Assistance and support of network connectivity, implementation and setup
- On-site technical support staff for coordination of testing and setup (the successful Proposer must perform actual setup and testing)
- On-site secure storage for kiosks and vendor equipment at the time of delivery and during installation. Storage will also be provided for consumable materials
- MDAD can provide office space for rent to the successful proposer as needed

## **2.6 Implementation Services to be Provided**

The selected Proposer shall be responsible for providing on-site installation, integration, software implementation, and configuration services for all components of the APC Kiosks purchased under the resultant contract. The selected Proposer shall be responsible for installation, calibration, and testing the Kiosks and insuring proper functionality prior to launching in the production environment. The selected Proposer must perform all implementation/installation services in accordance with applicable laws, ordinances, rules, and regulations and in accordance with the appropriate CBP Documentation. All implementation services shall be coordinated through the authorized MDAD project manager.

APC Kiosks shall be installed in specific locations within existing CBP inspection facilities located within MIA and as directed and approved by the MDAD staff, MDAD's contracted technical support staff and CBP officials. MDAD shall order the APC Kiosks in phases based on need, and provide the selected Proposer with the information as to the location.

Although it is anticipated that approximately, one hundred and forty-four (144) APC Kiosks may be required in the resultant contract term; Proposers are advised that these are estimated quantities and not a guarantee.

Upon notification from MDAD as to the number of APC Kiosks and locations identified, the selected Proposer shall submit to MDAD a detailed work plan and schedule for all work, on-site testing, and installation. APC kiosks shall be installed, tested, and fully operational in compliance with CBP Technical and Business Requirements within 30 days after receiving a Notice to Proceed from MDAD.

The selected Proposer shall include a list of equipment to be used, with cut sheets with clearly marked dimensions of all equipment to be used. Also, the successful Proposer shall provide a detailed acceptance test plan to include preliminary acceptance testing of all hardware and software components. Preliminary acceptance testing will take place on-site at MIA as directed by MDAD. Final acceptance cannot occur until all failures or "unaccepted items" from the preliminary testing have been resolved and approved by MDAD and CBP. The successful Proposer must provide a report (checklist) for all kiosk hardware, software, installation, implementation, configuration, training components if an acceptable form.

Proposers should provide a detailed description of their approach and methodology to providing the APC Kiosks and all implementation services along with the associated project timeline for each phase in Item No. 9 of the Proposer Information Section based on the following schedule:

- Phase I: 36 APC Kiosks – Initial purchase
- Phase II: 36 APC Kiosks – Twelve (12) to Eighteen (18) months after initial purchase
- Phase III: 36 APC Kiosks – Twenty four (24) to Thirty (30) months after phase II
- Phase IV: 36 APC Kiosks – Twelve (12) months after Phase III

## **2.7 Maintenance and Support Services**

The selected Proposer shall provide all maintenance support services for the APC Kiosks, including all hardware and software, throughout the term of the contract, including any optional renewal periods. At a minimum, maintenance services shall include updates and upgrades to the APC Kiosks to maintain compatibility with current and future CBP requirements affecting only the Phases delivered at the award of this contract. Maintenance Services on the software shall include corrections of any substantial defects, fixes of any minor bugs, and fixes due to any conflicts with mandatory operating system security patches as well as upgrades to new version releases. All environments, production and non-production, including testing and staging shall also be covered under Maintenance Services. Maintenance Services may be provided via Remote Services using virtual private network (VPN) access. Maintenance Services for the equipment/device component shall include preventative maintenance to combat normal wear and tear from general usage to maintain proper operations. Such preventative maintenance shall include cleaning, inspection, and recalibration of the equipment/devices, at a minimum. The successful Proposer shall be responsible for all repairs inclusive within the

maintenance and support services. Proposers should provide a detailed description of maintenance services to be provided in Item No. 16 of the Proposer Information Section.

**2.7.1 On-site Inventory of Consumables and Replacement Parts**

The selected Proposer shall provide all consumables and supplies for the Kiosks and associated equipment throughout the term of contract. All consumables and supplies from the selected Proposer must be able to fit and function as required in the kiosks provided by the Proposer.

Consumables shall include but not be limited to:

- APC thermal receipt printer paper. (Each roll of paper is expected to be able to print a minimum of 800 receipts). Quantities may be based on processing approximately 300,000 Passengers per month.
- Silicone Membrane Kits (20 membranes, and cleaner tape). Each kit is expected to process approximately 140,000 Passengers. (Each membrane shall process at least 7,000 Passengers).

The successful Proposer shall provide a minimum of three (3) months of consumables prior to final acceptance being issued to provide an initial baseline for usage and to establish re-ordering guidelines. The County reserves the right to purchase consumables from alternate sources if a lower price is available and obtain a cost concession from the awarded vendor.

The successful Proposer shall propose a list of replacement parts to MDAD and then after approval from MDAD maintain a minimum of 10% replacement parts for the Kiosks to be housed on-site at MIA for the completion of immediate repairs. Replacement parts costs shall be inclusive within the annual Maintenance and Support payment.

**2.8 Technical Support Services**

The selected Proposer shall be responsible for providing on-site and on-call technical support services to ensure optimal performance of the proposed Kiosks, including all components. This should include remote diagnostic tools to detect and correct application errors in the software component. All alerts or error notifications shall be sent to the MDAD IT Helpdesk. A Helpdesk representative will open a ticket and contact the vendor. The County's preferred escalation process is outlined below:

Severity	Definition	Response Time	Resolution Time	Status Frequency Update
1=First Level Support*	Serviced by the onsite maintenance provider and shall investigate the reported error and make best efforts to correct the problem.	Ten 10 Minutes	2 hours	Fifteen (15) Minutes
2=Second Level Support	Proposer shall dispatch additional technical support to assist the on-site service provider.	Fifteen (15) Minutes	Six (6) Hours	Two (2) Hours
3=Third Level Support	Combines the Manager, Proposer's Director, MDAD IS&T Manager, Terminal Manager and Proposers Technical Support staff and higher level staff within MDAD. Primary focus is to resolve the	One (1) Hour	Forty Eight (48) Hours	Four (4) Hours



	problem by committing all available resources.			
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\*In the event that the on-site maintenance provider is unable to correct the problem in a reasonable timeframe (not to exceed 2 hours) or the problem is outside the scope of the work defined herein, the vendor shall immediately contact the appropriate off-site support technicians to escalate the problem to the next level of support.. The Proposer's on-site technical manager must monitor all calls for compliance with stated times and to arrange further support in a timely manner if necessary.

**2.9 Warranty shall be one year from date of acceptance**

**A. Type of Warranty Coverage Required**

In addition to all other warranties that may be supplied by the Proposer, the bidder shall warrant its products and/or service against faulty labor and/or defective material, for a minimum period of one (1) year after the date of acceptance of the labor, materials and/or equipment by the County. This warranty requirement shall remain in force for the full one (1) year period; regardless of whether the bidder is under contract with the County at the time of defect. Any payment by the County on behalf of the goods or services received from the bidder does not constitute a waiver of these warranty provisions.

**B. Correcting Defects Covered Under Warranty**

The Proposer shall be responsible for promptly correcting any deficiency, at no cost to the County, within five (5) calendar days after the County notifies the Proposer of such deficiency in writing. If the Proposer fails to honor the warranty and/or fails to correct or replace the defective work or items within the period specified, the County may, at its discretion, notify the Proposer, in writing, that the Proposer may be debarred as a County bidder and/or subject to contractual default if the corrections or replacements are not completed to the satisfaction of the County within five (5) calendar days of receipt of the notice. If the Proposer fails to satisfy the warranty within the period specified in the notice, the County may (a) place the Proposer in default of its contract, and/or (b) procure the products or services from another vendor and charge the Proposer for any additional costs that are incurred by the County for this work or items; either through a credit memorandum or through invoicing.

**C. The Propser shall provide an extended warranty for the term of the resultant contract that shall meet the same system warranty coverage as described above and that was included during the first year factory warranty period.**

**2.10 Training**

The successful Proposer shall provide system administration, user, kiosk diagnostics repair, and maintenance training to designated MDAD staff, CBP staff and other MDAD contracted system support staff. Training shall be on-site at MIA for up to fifteen (15) users and be coordinated with approved dates/time by MDAD. All training must be completed prior to Final Acceptance of each phase of APC Kiosks installed at MIA. Additional training shall be made available via on-line videos or other resources on an ongoing basis throughout the term of the contract awarded as a result of this solicitation. Proposers should provide a detailed description of the training services to be provided in Item No 20 of the Proposer Information Section.

The successful Proposer shall provide MDAD with a minimum of six (6) hard copies (sets) and one reproducible DVD. Manuals and documentation should include detailed instructions on the use, administrative, repair, and maintenance functions covering the kiosks, Kiosk and KMS software, peripherals, and related components.

## 2.11 Software Escrow

The selected Proposer shall be required to enter into a software escrow agreement with a licensed third party agent to house the source code associated with the proposed APC Kiosk at the time of Final Acceptance as well as subsequent updates throughout the life of the contract, including any extensions or renewals thereof. Proposers should provide a detailed description of escrow services and a copy of an existing sample escrow agreement in response to Item No. 25 of the Proposer Information Section. Software escrow shall be provided by the selected Proposer and pricing for software escrow fees shall be listed on the Form B-1 Price Schedule and will be paid to the selected Proposer. No third party invoicing shall be allowed.

## 2.14 Site Security Requirements

The successful Proposer must provide local U.S. Customs and Border Protection (CBP) officials with required information for all vendor personnel that will on-site for background checks before access to CBP areas will be granted. This information must be submitted at least one month before installation work is scheduled to begin. Proposers must comply with the "Conducting business with CBP" document per attachment No. 4 of the solicitation. MDAD will not provide escorts or escorting services. The successful Proposer shall be responsible for obtaining MDAD security badges prior to commencement of any onsite work per attachment No. 5.

# 3.0 RESPONSE REQUIREMENTS

## 3.1 Submittal Requirements

In response to this Solicitation, Proposer should **complete and return the entire Proposal Submission Package**. Proposers should carefully follow the format and instructions outlined therein. All documents and information must be fully completed and signed as required and submitted in the manner described.

The proposal shall be written in sufficient detail to permit the County to conduct a meaningful evaluation of the proposed services. However, overly elaborate responses are not requested or desired.

# 4.0 EVALUATION PROCESS

## 4.1 Review of Proposals for Responsiveness

Each proposal will be reviewed to determine if the proposal is responsive to the submission requirements outlined in this Solicitation. A responsive proposal is one which follows the requirements of this Solicitation, includes all documentation, is submitted in the format outlined in this Solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may result in the proposal being deemed non-responsive.

## 4.2 Evaluation Criteria

Proposals will be evaluated by an Evaluation/Selection Committee which will evaluate and rank proposals on criteria listed below. The Evaluation/Selection Committee will be comprised of appropriate County personnel and members of the community, as deemed necessary, with the appropriate experience and/or knowledge, striving to ensure that the Evaluation/Selection Committee is balanced with regard to both ethnicity and gender. The criteria are itemized with their respective weights for a maximum total of one hundred (100) points per Evaluation/Selection Committee.



determine the highest ranked Proposer. The County reserves the right to negotiate the final terms, conditions and pricing of the contract as may be in the best interest of the County.

#### **4.7 Local Preference**

The evaluation of competitive solicitations is subject to Section 2-8.5 of the Miami-Dade County Code, which, except where contrary to federal or state law, or any other funding source requirements, provides that preference be given to local businesses. If, following the completion of final rankings by the Evaluation/Selection Committee a non-local Proposer is the highest ranked responsive and responsible Proposer, and the ranking of a responsive and responsible local Proposer is within 5% of the ranking obtained by said non-local Proposer, then the Evaluation/Selection Committee will recommend that a contract be negotiated with said local Proposer.

#### **4.8 Negotiations**

The County may award a contract on the basis of initial Proposals received. Therefore, each initial Proposal should contain the Proposer's best terms from a monetary and technical standpoint.

The Evaluation/Selection Committee will evaluate, score and rank proposals, and submit the results of their evaluation to the County Mayor or designee with their recommendation. The County Mayor or designee will determine with which Proposer(s) the County shall negotiate, if any, taking into consideration the Local Preference Section above. The County Mayor or designee, at their sole discretion, may direct negotiations with the highest ranked Proposer, negotiations with multiple Proposers, and/or may request best and final offers. In any event the County engages in negotiations with a single or multiple Proposers and/or requests best and final offers, the discussions may include price and conditions attendant to price.

Notwithstanding the foregoing, if the County and said Proposer(s) cannot reach agreement on a contract, the County reserves the right to terminate negotiations and may, at the County Mayor's or designee's discretion, begin negotiations with the next highest ranked Proposer(s). This process may continue until a contract acceptable to the County has been executed or all proposals are rejected. No Proposer shall have any rights against the County arising from such negotiations or termination thereof.

Any Proposer recommended for negotiations shall complete a Collusion Affidavit, in accordance with Sections 2-8.1.1 of the Miami-Dade County Code. (If a Proposer fails to submit the required Collusion Affidavit, said Proposer shall be ineligible for award.)

Any Proposer recommended for negotiations may be required to provide to the County:

- a) Its most recent certified business financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, together with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for a material change in the financial condition. A copy of the most recent business income tax return will be accepted if certified financial statements are unavailable.
- b) Information concerning any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Proposer, any of its employees or subcontractors is or has been involved within the last three years.

#### **4.9 Contract Award**

Any contract, resulting from this Solicitation, will be submitted to the County Mayor or designee for approval. All Proposers will be notified in writing when the County Mayor or designee makes an award recommendation. The Contract award, if any, shall be made to the Proposer whose proposal shall be deemed by the County to be in the best interest of the County. Notwithstanding the rights of protest listed below, the County's decision of whether to make the award and to which Proposer shall be final.

#### 4.10 Rights of Protest

A recommendation for contract award or rejection of all proposals may be protested by a Proposer in accordance with the procedures contained in Sections 2-8.3 and 2-8.4 of the County Code, as amended, and as established in Implementing Order No. 3-21.

### 5.0 TERMS AND CONDITIONS

The anticipated form of agreement is attached. The terms and conditions summarized below are of special note and can be found in their entirety in the agreement:

#### a) **Vendor Registration**

Prior to being recommended for award, the Proposer shall complete a Miami-Dade County Vendor Registration Package. Effective June 1, 2008, the new Vendor Registration Package, including a Uniform Affidavit Packet (Affidavit form), must be completed. The Vendor Registration Package, including all affidavits can be obtained by downloading from the website at <http://www.miamidade.gov/procurement/vendor-registration.asp> or from the Vendor Assistance Unit at 111 N.W. 1st Street, 13th Floor, Miami, FL. The recommended Proposer shall affirm that all information submitted with its Vendor Registration Package is current, complete and accurate, at the time they submitted a response to the Solicitation, by completing an Affirmation of Vendor Affidavit form.

#### b) **Insurance Requirements**

The Contractor shall furnish to the County, Internal Services Department, Procurement Management Services Division, prior to the commencement of any work under any agreement, Certificates of Insurance which indicate insurance coverage has been obtained that meets the stated requirements.

### 6.0 ATTACHMENTS

Proposal Submission Package  
Proposal Submission Package (Including Forms A1-A5)  
Form B-1 Price Proposal Schedule  
Attachment 1 – U.S. CBP Automated Passport Control: Business Requirements (version 15, April 2014)  
Attachment 2 – U.S. CBP Automated Passport Control Service Technical Reference Manual (version 2, January 2014)  
Attachment 3 – U.S. CBP Automated Passport Control Interface Control Document  
Attachment 4 – Conducting business with CBP in FIS  
Attachment 5 – MDAD ID Badge Application  
Draft Form of Agreement



**PROPOSAL SUBMISSION PACKAGE**  
**REQUEST FOR PROPOSALS (RFP) No. 00118**  
**AUTOMATED PASSPORT CONTROL KIOSKS**

In response to the Solicitation, Proposer shall RETURN THIS ENTIRE PROPOSAL SUBMISSION PACKAGE as follows:

**1. Solicitation Submittal Form, Cover Page of Proposal**

Complete and sign the solicitation submittal form (by Proposer or representative of the Proposer who is legally authorized to enter into a contractual relationship in the name of the Proposer) as required.

**2. Proposer Information**

Complete following the requirements therein.

*Note: The Proposer Information document is available in Word and is included in the Solicitation attachments.*

**3. Affidavits/Acknowledgements**

Complete and sign the following:

- Lobbyist Registration for Oral Presentation
- Fair Subcontracting Practices
- Subcontractor/Supplier Listing

**4. Form B-1, Price Proposal Schedule**

Complete following the requirements therein.

**Please refer to the front cover of this Solicitation for electronic submission instructions.**

## **PROPOSER INFORMATION**

### **Automated Passport Control Kiosks**

#### **TABLE OF CONTENTS**

The Table of Contents should outline in sequential order the major areas of the proposal. Proposers should carefully follow the order and instructions outlined below. All pages of the proposal, including the enclosures, must be clearly and consecutively numbered and correspond to the Table of Contents.

#### **Minimum Qualification Requirements**

The minimum qualifications requirements for this Solicitation are as follows:

1. The successful Proposer must have a minimum of ten (10) APC kiosks in a single location operating at an airport that is compliant with the processing requirements of Visa Waiver Passengers at the time of proposal submission of this solicitation.

The kiosks and software must be compatible with the current CBP requirements and must meet all technical specifications set forth by the U.S. Customs and Border Protection (CBP) Document Number 3209000-TRM, version 2 titled "Automated Passport Control Service Technical Reference Manual (version 2) in Attachment No. 2. Additionally, the Proposer must satisfy all business requirements set forth in the CBP Automated Passport Control: Business Requirements (Version 15 dated April 2014) in Attachment No. 1.

Proposers shall provide formal documentation from the U.S. airport where the ten (10) APC kiosks are in operation and confirm that the minimum qualifications were met.

#### **Proposer's Experience and Past Performance**

1. Describe the Proposer's past performance and experience and state the number of years that the Proposer has been in existence, the current number of employees, and the primary markets served.
2. Provide a detailed description of comparable contracts (similar in scope of services to those requested herein) which the Proposer has either ongoing or completed within the past three years. The description should identify for each project: (i) client, (ii) description of work, (iii) total dollar value of the contract, (iv) dates covering the term of the contract, (v) client contact person and phone number, (vi) statement of whether Proposer was the prime contractor or subcontractor, and (vii) the results of the project. Where possible, list and describe those projects performed for government clients or similar size private entities (excluding any work performed for the County).
3. List all contracts which the Proposer has performed for Miami-Dade County. The County will review all contracts the Proposer has performed for the County in accordance with Section 2-8.1(g) of the Miami-Dade County Code, which requires that "a Bidder's or Proposer's past performance on County Contracts be considered in the selection of Consultants and Contractors for future County Contracts." As such the Proposer must list and describe all work performed for Miami-Dade County and include for each project: (i) name of the County Department which administers or administered the contract, (ii) description of work, (iii) total dollar value of the contract, (iv) dates covering the term

of the contract, (v) County contact person and phone number, (vi) statement of whether Proposer was the prime contractor or subcontractor, and (vii) the results of the project.

4. Provide a listing of all major clients using APC Kiosks.

**Must Include:**

- Name of the Agency
- Name/Title of the Contact Person
- Contact Person's Phone Number
- Contact Person's E-mail Address
- Project Title, Value, Start and End dates

### **Key Personnel and Subcontractors Performing Services**

5. Provide an organization chart showing all key personnel, including their titles, to be assigned to this project. This chart must clearly identify the Proposer's employees and those of the subcontractors or sub consultants and shall include the functions to be performed by the key personnel. All key personnel shall include all partners, managers, seniors and other professional staff that will perform work and/or services in this project. The organization chart shall include assigned roles and responsibilities as required by the "Technical Support Services Chart" in Section 2, paragraph 2.8 of the solicitation.
6. List the names and addresses of all first tier subcontractors, and describe the extent of work to be performed by each first tier subcontractor. Describe the experience, qualifications and other vital information, including relevant experience on previous similar projects, of the subcontractors who will be assigned to this project.
7. Describe the experience, qualifications and other vital information, including relevant experience on previous similar projects, of all key personnel, including those of subcontractors, who will be assigned to this project.
8. Provide resumes, with job descriptions and other detailed qualification information on all key personnel who will be assigned to this project, including any key personnel of subcontractors.

Note: After proposal submission, but prior to the award of any contract issued as a result of this Solicitation, the Proposer has a continuing obligation to advise the County of any changes, intended or otherwise, to the key personnel identified in its proposal.

### **Proposed Approach to Providing the Services**

9. Describe Proposer's Project Management methodology and recommended strategies in performing the services described in Section 2.0 The Proposer shall describe its approach to project organization and management, to include the various project states and milestones, change of Scope management, implementation and training strategies, responsibilities of Proposer's management team, and necessary Proposer and County staffing required to complete the project.
10. Describe Proposer's approach to project organization and management, including the responsibilities of Proposer's management and staff personnel that will perform work in this project.
11. Provide a project schedule identifying specific key tasks and duration for each phase of the implementation.
12. Its most recent certified business financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, together with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet

and income statement submitted, or with an explanation for a material change in the financial condition. A copy of the most recent business income tax return will be accepted if certified financial statements are unavailable.

13. Information concerning any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Proposer, any of its employees or subcontractors is or has been involved within the last three years.
14. Provide a detailed description of the APC Kiosks and associated hardware being proposed. This should include all information regarding the aspects of functionality. Please provide images or diagrams to illustrate each component. Additionally, Proposer should provide the recommended life cycle of the equipment and associated components to ensure optimal performance.
15. Provide a detailed description of the Kiosk Management Software (KMS) module as outlined in Section 2.4.2. of the Solicitation. Proposer's shall include a detailed explanation how the KMS software will interface (inclusive of configuring and synchronizing data) with CBP system(s) and include a mobile component that is compatible with both android and IOS operating systems.
16. Provide a detailed explanation of the approach to maintenance services, including but not limited to the Proposer's policy regarding new software releases, software upgrades, updates, patches, bug fixes, optional software features, etc. Include approximate frequency at which updates and/or upgrades are released as well as the method for deploying such updates and/or upgrades. Provide a detailed explanation of how maintenance services will be provided for equipment/devices including the recommended maintenance schedules. This should include information regarding preventative maintenance services on equipment as well as methodologies for developing potential predictive maintenance. Only maintenance services that are included in the cost proposal being proposed to the County should be included in the response to this question. Do not include information regarding services that are provided at an additional cost.

Provide a detailed description of how the Proposer will address the County's need for on-site inventory. This should include information on quantity of items to be provided or any other information required to meet this requirement. Provide a detailed description and unit cost of the consumable materials and replacement parts required by the APC Kiosks. Provide the minimum storage requirements for on-site inventory including consumables inclusive of size, temperature, accessibility, etc.

17. Provide a detailed description of the power components, network capability and associated requirements to be provided by MDAD per Section 2, Item 2.5 of the solicitation.
18. Provide a detailed description of Proposer's technical support services including telephone and email support, response times, escalation procedures, days and hours available, etc. per Section 2, Item 2.8 of the solicitation.
19. Provide a detailed description of the training and training materials that are offered as part of the Proposal to the County. Provide the recommended number of on-site training hours, as well as any other type of training, including, but not limited to on-line tutorials, web seminar training (if available), training documentation etc.
20. Provide a description of anything (functionality, software, or hardware) not identified in the RFP that will be required to meet the Scope of Services outlined within the Solicitation.

Provide in detail the manufacturer's warranty pertaining to the kiosk products, hardware and software. Include written material describing any optional or extended warranties available from the proposer or manufacturer, and the costs for these additional warranties.

21. Describe the key value-added features of the proposal (products or services) that differentiate the Proposer from other APC Kiosks providers.

- 22. Provide a description of how the Proposer will meet the County's needs for Software Escrow and the recommended third party agent.
- 23. Provide a detailed description of the APC Kiosks' current and future status of Wi-Fi compatibility.
- 24. Provide a description of any customization work required to meet the needs of this solicitation and include the associated costs within table B-5 of the Price Proposal.

**PROPOSED PRICING**

- 25. The Proposer's price shall be submitted on Form B-1 "Price Proposal Schedule" in the manner required on said attached form. All pricing must include **all cost elements** being proposed. This pricing **MUST** be inclusive of all costs to meet the requirements that the Proposer has identified that they are capable of providing in their RFP response. Proposers should include a detailed description of the cost models used in the provided cost breakdown tables.

**EXCEPTIONS TO TERMS:**

- 26. Identify if Proposer has taken any exception to the terms of this Solicitation or draft form of agreement. If so, indicate what alternative is being offered and the cost implications of the exception(s).



# **FORM B-1**



**FORM B-1 - PRICE PROPOSAL SCHEDULE  
Automated Passport Control Kiosks**

**INSTRUCTIONS:**

The Proposer's price shall be submitted on this Form B-1 "Price Proposal Schedule". Proposer is requested to fill in the applicable blanks on this form. Pricing must include **all cost elements** including, but not limited to, software licenses, equipment/devices, implementation, configuration, integration, testing, training, maintenance, support, and professional support services required to meet the specifications outlined in Section 2.0 of this solicitation document.

**A. PROPOSED PRICE**

The Proposer shall state its price for providing all minimum and desired services as stated in Section 2.0 - Scope of Services. The pricing submitted below shall be used to evaluate Proposers.

**TOTAL PROPOSED PRICE FOR THE AUTOMATED PASSPORT CONTROL KIOSKS  
OVER THE INITIAL FIVE (5) YEAR TERM:**

\$ \_\_\_\_\_

*Note: A payment schedule will be negotiated with the selected Proposer based upon project milestones and deliverables (e.g., installation, County's final acceptance of deliverables, etc.)*

**B. BREAKDOWN OF PROPOSED PRICE**

The Proposer shall provide a breakdown of the "Proposed Price" stated in Section A, above, as provided for in the tables below. Items that are not applicable shall be identified as "N/A"; items that are at no charge to the County shall be identified as "N/C". Unless otherwise indicated, the proposed prices set forth below will correspond to the initial five year contract term.

DESCRIPTION	TOTAL PRICE
Software License Fee <i>(Please provide detailed cost breakdown in Table B1 below)</i>	\$
Equipment/Devices <i>(Please provide detailed cost breakdown in Table B2 below)</i>	\$
Professional Services <i>(Please provide detailed cost breakdown in Table B3 below)</i>	\$
Testing and Implementation <i>(Please provide detailed cost breakdown in Table B4 below)</i>	\$
Customization <i>(Please provide detailed cost breakdown in Table B5 below)</i>	\$



DESCRIPTION	TOTAL PRICE
Training <i>(Please provide detailed cost breakdown in Table B6 below)</i>	\$
Miscellaneous Costs including Travel, etc. if applicable <i>(Please provide a detailed cost breakdown in Table B8 Below)</i>	\$
Extended Warranty for Hardware / Equipment <i>(Please provide a detailed cost breakdown in Table B9)</i>	\$
Escrow Services <i>(Please provide a detailed cost breakdown in Table B10 Below)</i>	\$
<b>Maintenance and Technical Support Service Fees - Initial Contract Term</b> <b><i>(Please provide a detailed cost breakdown in Table B11 Below)</i></b>	
Maintenance and Technical Support Service Fees Year 1	\$
Maintenance and Technical Support Service Fees Year 2	\$
Maintenance and Technical Support Service Fees Year 3	\$
Maintenance and Technical Support Service Fees Year 4	\$
Maintenance and Technical Support Service Fees Year 5	\$
<b>*Total Proposed Price:</b>	\$

**\* Note: Total Proposed Price shall be equal to the Proposed Price stated in Section A above.**

TABLE B1: PRICE BREAKDOWN FOR PROPOSED SOFTWARE APPLICATION		
Software Product Name and proposed Version	Unit of Purchase	Total
	Perpetual License - Unlimited Kiosks / Users	\$
<b>Total for Software:</b>		\$



TABLE B2: PRICE BREAKDOWN FOR EQUIPMENT/DEVICES (Additional equipment/devices shall be listed here)			
Description	Quantity	Unit Price	Total (Unit Price x Quantity)
Phase I – APC Kiosks	36		\$
Phase II – APC Kiosks	36		\$
Phase III – APC Kiosks	36		\$
Phase IV – APC Kiosks	36		\$
<b>Total for Equipment/Devices:</b>			<b>\$</b>

TABLE B3 - PRICE BREAKDOWN FOR PROFESSIONAL SERVICES (Example: Management phase, use of consultants, manufacturing phase, etc.)	
Description/Milestone	Price
	\$
	\$
	\$
	\$
	\$
<b>Total for Professional Services:</b>	
	<b>\$</b>

TABLE B4 - PRICE BREAKDOWN FOR TESTING AND IMPLEMENTATION SERVICES	
Description/Milestone	Price
	\$
	\$
	\$



<b>Total for Testing and Implementation:</b>	<b>\$</b>
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<b>TABLE B5 - PRICE BREAKDOWN FOR CUSTOMIZATION</b>	
Description/Milestone	Price
	\$
	\$
	\$
<b>Total for Customization:</b>	<b>\$</b>

<b>TABLE B6 - PRICE BREAKDOWN FOR TRAINING SERVICES</b>	
Description/Milestone	Price
	\$
	\$
	\$
<b>Total for Training:</b>	<b>\$</b>

<b>TABLE B8 - PRICE BREAKDOWN FOR MISCELLANEOUS COSTS</b>	
Description/Milestone	Price
	\$
	\$
<b>Total for Miscellaneous Costs:</b>	<b>\$</b>

<b>TABLE B9 - PRICE BREAKDOWN FOR EXTENDED WARRANTIES – HARDWARE / EQUIPMENT</b>	
Description/Milestone	Price
Maintenance and Technical Support Service Fees Year 1	\$
Maintenance and Technical Support Service Fees Year 2	\$
Maintenance and Technical Support Service Fees Year 3	\$
Maintenance and Technical Support Service Fees Year 4	\$
Maintenance and Technical Support Service Fees Year 5	\$
<b>Total for Extended Warranty:</b>	<b>\$</b>



TABLE B10 - PRICE BREAKDOWN FOR ESCROW SERVICES	
Description/Milestone	Price
Escrow Services – Year 1	\$
Escrow Services – Year 2	\$
Escrow Services – Year 3	\$
Escrow Services – Year 4	\$
Escrow Services – Year 5	\$
<b>Total for Escrow Services:</b>	<b>\$</b>

TABLE B11 - PRICE BREAKDOWN FOR MAINTENANCE AND SUPPORT SERVICES (INCLUSIVE OF CONSUMABLES, REPAIRS, AND REPLACEMENT PARTS)		
DESCRIPTION	ANNUAL COSTS	EXTENDED TOTAL
<b>Maintenance and Technical Support Services Fees (Contract Year 1)</b>		<b>\$</b>
Maintenance and Technical Support Service Fees	\$	
Consumables	\$	
Replacement Parts	\$	
Repairs	\$	
<b>Maintenance and Technical Support Services Fees (Contract Year 2)</b>		<b>\$</b>
Maintenance and Technical Support Service Fees	\$	
Consumables	\$	
Replacement Parts	\$	
Repairs	\$	
<b>Maintenance and Technical Support Services Fees (Contract Year 3)</b>		<b>\$</b>
Maintenance and Technical Support Service Fees	\$	
Consumables	\$	
Replacement Parts	\$	
Repairs	\$	
<b>Maintenance and Technical Support Services Fees (Contract Year 4)</b>		<b>\$</b>
Maintenance and Technical Support Service Fees	\$	
Consumables	\$	
Replacement Parts	\$	
Repairs	\$	
<b>Maintenance and Technical Support Services Fees (Contract Year 5)</b>		<b>\$</b>
Maintenance and Technical Support Service Fees	\$	
Consumables	\$	
Replacement Parts	\$	
Repairs	\$	
<b>Total for Initial Term Maintenance and Support Services:</b>	<b>\$</b>	

**C. OPTIONAL PRODUCTS/SERVICES**

The Proposer shall state its price for providing all Optional Products and Services as provided for in the tables below. **These prices should not be included in the Proposer's Total Proposed Price.** Unless otherwise negotiated by County and selected Proposer, these rates will remain in effect for the duration of any contract issued as a result of this RFP, including all option-to-renew periods and extensions exercised by the County.

**C1. OPTION-TO-RENEW (OTR) MAINTENANCE AND TECHNICAL SUPPORT SERVICE FEES**

<b>OTR #1 - PRICE BREAKDOWN FOR MAINTENANCE AND SUPPORT SERVICES (INCLUSIVE OF CONSUMABLES, REPAIRS, AND REPLACEMENT PARTS) (Years 6-10)</b>		
DESCRIPTION	ANNUAL COSTS	EXTENDED TOTAL
<b>Maintenance and Technical Support Services Fees ( Contract Year 6)</b>		<b>\$</b>
Maintenance and Technical Support Service Fees	\$	
Consumables	\$	
<i>Replacement Parts</i>	\$	
<i>Repairs</i>	\$	
<b>Maintenance and Technical Support Services Fees (Contract Year 7)</b>		<b>\$</b>
Maintenance and Technical Support Service Fees	\$	
Consumables	\$	
<i>Replacement Parts</i>	\$	
<i>Repairs</i>	\$	
<b>Maintenance and Technical Support Services Fees (Contract Year 8)</b>		<b>\$</b>
Maintenance and Technical Support Service Fees	\$	
Consumables	\$	
<i>Replacement Parts</i>	\$	
<i>Repairs</i>	\$	
<b>Maintenance and Technical Support Services Fees (Contract Year 9)</b>		<b>\$</b>
Maintenance and Technical Support Service Fees	\$	
Consumables	\$	
<i>Replacement Parts</i>	\$	
<i>Repairs</i>	\$	
<b>Maintenance and Technical Support Services Fees (Contract Year 10)</b>		<b>\$</b>
Maintenance and Technical Support Service Fees	\$	
Consumables	\$	
<i>Replacement Parts</i>	\$	
<i>Repairs</i>	\$	
<b>Total for OTR #1 Maintenance and Support Services:</b>		<b>\$</b>



**C2. OPTION-TO-RENEW (OTR) EXTENDED WARRANTY FEES**

Description/Milestone	Price
Maintenance and Technical Support Service Fees Contract Year 6	\$
Maintenance and Technical Support Service Fees Contract Year 7	\$
Maintenance and Technical Support Service Fees Contract Year 8	\$
Maintenance and Technical Support Service Fees Contract Year 9	\$
Maintenance and Technical Support Service Fees Contract Year 10	\$
<b>Total for Extended Warranty (Years 6-10):</b>	<b>\$</b>

**C3. OTR SOFTWARE ESCROW FEES**

Proposer must provide the cost to the county for depositing the Solution with a third party software escrow agent.

DESCRIPTION	ANNUAL FEE	EXTENDED TOTAL
<b>OTR 1 – Software Escrow Agreement Fees (Years 6 - 10)</b>		\$
Software Escrow Agreement Fees <i>Contract Year 6</i>	\$	
Software Escrow Agreement Fees <i>Contract Year 7</i>	\$	
Software Escrow Agreement Fees <i>Contract Year 8</i>	\$	
Software Escrow Agreement Fees <i>Contract Year 9</i>	\$	
Software Escrow Agreement Fees <i>Contract Year 10</i>	\$	

**C4. OPTIONAL EQUIPMENT**

Product Description	Unit Cost Per Item
	\$
	\$
	\$
	\$
	\$
	\$



**C5. OPTIONAL PROFESSIONAL SERVICES**

Service	Proposed Hourly Rate
Project Manager	\$
Technician	\$
Programmer	\$
Junior Programmer	\$
Web Developer	\$
Trainer	\$
System Administrator	\$
Database Administrator	\$
On-Site Training (Per Day)	\$
	\$
	\$
	\$
	\$

*Note: Compensation to the selected Consultant for Optional Professional Services shall be based on the projects assigned. The selected Proposer shall use agreed upon hourly rates to calculate the not-to-exceed cost statement required for each project.*



# DRAFT FORM OF AGREEMENT



DRAFT FORM OF AGREEMENT

(This is the form of agreement the County anticipates awarding to the selected Proposer.)

**AUTOMATED PASSPORT CONTROL KIOSKS**

THIS SOFTWARE LICENSE, EQUIPMENT/DEVICES, IMPLEMENTATION, MAINTENANCE, AND SUPPORT AGREEMENT ("AGREEMENT") IS MADE AND ENTERED BY AND BETWEEN \_\_\_\_\_, A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF \_\_\_\_\_, HAVING ITS PRINCIPAL OFFICE AT \_\_\_\_\_ (HEREINAFTER REFERRED TO AS THE "CONTRACTOR"), AND MIAMI-DADE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, HAVING ITS PRINCIPAL OFFICE AT 111 N.W. 1ST STREET, MIAMI, FLORIDA 33128 (HEREINAFTER REFERRED TO AS THE "COUNTY"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide Automated Passport Control Kiosks and associated services, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. 00118 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated \_\_\_\_\_, 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 Automated Passport Control Kiosks 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), all other appendices and attachments hereto, all amendments issued hereto, RFP No. 00118 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/Agreement 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 \_\_\_\_\_ and its permitted successors and assigns.
- 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 word "Documentation" to mean all manuals, user documentation, and other related materials pertaining to the Software which are furnished to the County in connection with the hardware or software provided.
- i) The words "Equipment" or "Devices" to mean the hardware products identified on Appendix A, "Scope of Services" to be provided by the Contractor to the County under this Agreement.
- j) 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.
- k) The word "Kiosk(s)" to mean Automated Passport Control Kiosks or APC Kiosks as identified on Appendix A, "Scope of Services"
- l) The word "Maintenance" to mean the product updates and product upgrades required for the County to achieve optimal performance of the Software as outlined in Appendix A, "Scope of Services".
- l) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- m) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- n) The words "Support" or "Technical Support" to mean the process to resolve reported incidents through error correction, patches, hot fixes, workarounds, replacements or any of the type of correction or modification required to fully utilize the Software capabilities, as outlined in Appendix A, "Scope of Services".
- o) The word "subcontractor" or "sub-consultant" 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.

- n) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

## **ARTICLE 2. 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) the Scope of Services (Appendix A), 3) the Miami-Dade County's RFP No. 00118 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

## **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 the date that it is signed by the County or the Contractor, whichever is later and continue through the last day of the 60<sup>th</sup> month. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for one (1) additional five (5) year period. 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 fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

**(1) to the County Project Manager:**

Miami-Dade Aviation Department  
P. O. 025504  
Miami, Florida 33102

Attention: Maurice Jenkins, Director Information Systems and Telecommunications  
Phone: 305-876-0934  
Email: [mjenkins@miami-airport.com](mailto:mjenkins@miami-airport.com)

and,

**to the Agreement Manager:**

Miami-Dade County  
Internal Services Department  
111 N.W. 1<sup>st</sup> Street, Suite 1300  
Miami, FL 33128-1974

Attention: Josh Brown  
Phone: (305) 596-8815  
Fax: (305) 375-5688  
Email: [joshbro@miamidade.gov](mailto:joshbro@miamidade.gov)

**(2) To the Contractor**

Attention:  
Phone:  
Fax:  
E-mail:

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. DELIVERY**

8.1 Delivery of the APC Kiosks shall be according to Appendix A, "Scope of Services" and Appendix C, "Project Timeline". All services performed under this Agreement are contingent upon final acceptance by the County.

8.2 Documentation. The Contractor shall provide electronic copies of the associated Documentation to the County upon Final Acceptance.

8.3 Each proposal shall be inclusive of all delivery and shipping costs for the APC Kiosks, Hardware, Parts, and Equipment throughout the term of this Agreement, including any options or extensions exercised by the County.

**ARTICLE 8. MAINTENANCE AND SUPPORT SERVICES**

Contractor shall provide the County with Technical Support and Maintenance Services in the manner outlined in Appendix A, "Scope of Services" for the APC Kiosks and associated services throughout the term of this Agreement, including any options or extensions exercised by the County. Consumables and replacement parts shall be included within the cost of ongoing Maintenance and Support Services.

**ARTICLE 9. GRANT OF LICENSE**

6.1 License. Contractor agrees to provide the County with licensed Software and Documentation in accordance with the provisions contained within this agreement.

6.2. Contractor grants the County a limited, perpetual, non-transferrable, non-exclusive, irrevocable license to use the licensed APC Kiosk Software, Systems, Hardware/Devices and Documentation in accordance with the terms of this agreement.

- a) Contractor shall require that all of its subcontractors and suppliers grant the County, its agents, suppliers and vendors perpetual, non-transferrable, non-exclusive, irrevocable licenses to use any third party software, in both subject and object form for any purpose not expressly forbidden by the terms hereof. Such licenses shall include but not be limited to the unrestricted right by the County to provide licensed software (including the source code and object code forms thereto), the Documentation and Programs therefore, to any other person(s) or entity(ies) for their use in connection with providing goods and/or services to MDAD or the County.
- b) As used above, "irrevocable" shall include, but not be limited to, the right of the County to continue using the licensed software or third party software irrespective of any breach or default pursuant to the terms hereof.
- c) Contractor shall provide the County with documentation, satisfactory to MDAD, confirming that the Contractor has acquired on the County's behalf all software licenses required hereunder.

**ARTICLE 10. SOFTWARE MODIFICATIONS**

10.1 Software Enhancements or Modifications. The County may, from time to time, request that the Contractor incorporate certain features, enhancements or modifications into the Software. When requested by the County, the Contractor shall provide the requested system enhancements/modifications including all relevant source code. Upon the County's request for such enhancements/modifications the County shall prepare a Statement of Work ("SOW") for the specific Project that shall define in detail the Services to be performed. The Contractor shall submit a cost and/or temporary revenue sharing proposal including all costs pertaining to furnishing the County with the enhancements/modifications.

- a) After the SOW has been accepted a detailed requirements and detailed design document shall be submitted illustrating the complete financial terms that govern the SOW, proposed Project staffing, anticipated Project schedule, and other information relevant to the Project. Each SOW executed hereunder shall automatically incorporate the terms and conditions of this Agreement. Such enhancements or modifications shall become the property of the County. Notwithstanding the foregoing, performance of any such modifications shall not compromise the Contractor's warranty obligations.
- b) Following the County's acceptance of all enhancements/modification, the Contractor shall provide the County, if so requested with written confirmation of the date the enhancements/modification was applied to the Software System, and any and all Documentation relating to the Software and or enhancements/modification thereto.
- c) The Contractor shall provide the County at no cost all updates and upgrades required to maintain compliance with U.S. CBP regulations including but not limited to future versions of the U.S. Customs and Border Protection (CBP) Document Number 3209000-TRM, version 2 titled "Automated Passport Control Service Technical Reference Manual (version 2) and CBP Automated Passport Control: Business Requirements (Version 15 dated April 2014).

#### **ARTICLE 11. SOFTWARE ESCROW**

The County requires that the Contractor maintain a software escrow account throughout the life of the Agreement to protect against failure of the Contractor to provide the agreed upon services. A copy of the Contractor's licensed software source code, and Contractor enhancements or modifications or customization or Developed Works of source code is to be kept by a trusted third party to ensure that the County will have access to the source code in the event that the Contractor is unable to support the software. The Contractor is required to maintain the most current version of the application with the escrow agent including, but not limited to all incremental releases and upgrades as well as any software customization or Developed Works created for the County. The terms and conditions associated with such software escrow services are outlined in Appendix E, "Escrow Agreement."

Solely in the event of a release event as defined under the Escrow Agreement, the Contractor grants to County, a non-exclusive, perpetual, paid in full license, to install, use, copy, publicly perform and digitally perform, modify and create derivative works, for the sole purpose of continuing the benefits afforded to the County under this Agreement, including the development of patches and upgrades solely for County's internal use. County shall have a right to modify and customize the Software, or to have the Software modified and customized by third-parties.

#### **ARTICLE 12. IMPLEMENTATION SERVICES**

- a) The County shall accept or reject the APC Kiosks within fifteen business (15) days of receipt unless otherwise provided elsewhere in this Agreement.
- b) If the Contractor fails to provide deliverables within the time specified or if the APC Kiosks delivered fails to conform to the requirements or are found to be defective in material or workmanship, then the County may reject the delivered APC Kiosks or may accept some items and reject the balance of the delivered APC Kiosks. The County shall notify Contractor of such rejection in writing and specify in such notice, the reasons for such rejection. Contractor agrees to deliver a fix or workaround replacement of the APC Kiosks for such rejected items within fifteen (15) business days of Contractor's receipt of the County's rejection notice.
- c) The Contractor shall bear the risk of loss or damage to delivered APC Kiosks until the time the Project Manager certifies that the kiosks have successfully completed the Final Acceptance test whether such loss or damage arises from acts or omissions (whether negligent or not) of the Contractor or the County or from any other cause whatsoever, except loss or damage arising solely from the negligence or willful acts of the County.

- d) Contractor agrees to install the APC Kiosks at the County's facilities. Contractor agrees to commence installation of the APC Kiosks according to the Implementation Schedule unless a different time for implementation is otherwise mutually agreed upon by the parties hereto. All implementation services will be performed during normal business hours. Whenever possible, however some services to be provided may be required outside of normal business hours to accommodate County operations. Work to be performed outside normal business hours will be mutually agreed by both parties. Contractor shall diligently pursue and complete such implementation services in accordance with the Implementation Schedule, so that such the APC Kiosks are in good working order and ready for use by the dates set forth in the Schedule.
- e) Contractor agrees to do all things necessary for proper implementation of the APC Kiosks and to perform its implementation obligations hereunder in an orderly, skillful and expeditious manner, with sufficient labor and materials to ensure efficient and timely completion of such obligations. If applicable, Contractor shall coordinate with the Project Manager all work with all other Contractors and/or County personnel performing work to complete APC Kiosk installation. The County shall be responsible for resolving all disputes relating to Site access between Contractor and/or County personnel. Contractor shall provide all materials necessary to properly implement the APC Kiosks. The County shall attempt to provide reasonable working and secure storage space for the performance by Contractor of the implementation services described herein.
- f) Unless otherwise agreed to by the County, Contractor agrees as part of the implementation to perform all required services to successfully achieve all objectives set forth in the scope of work , including, but not limited to, (a) system configuration; (b) interface development ; (c) software testing; (d) acceptance and user acceptance testing; (e) training; (f) cooperating with all other vendors supplying peripheral or ancillary equipment that will interface with the APC Kiosks; and (g) any additional services necessary to ensure Contractor's compliance with this Article 12.
- g) Testing shall consist of the tests described in the Scope of Services which are to be conducted collectively by the Contractor and the County. The purpose of these tests is to demonstrate the complete operability of the APC Kiosks in conformance with the requirements of the Contract. This will include an actual demonstration of all required functionality. All tests shall be in accordance with test plans and procedures prepared by Contractor and previously approved by the County. In the event of any outstanding deficiencies at the conclusion of installation testing, as determined by the County, Contractor shall be responsible for instituting necessary corrective measures, and for subsequently satisfactorily demonstrating and/or re-demonstrating system performance.

### **ARTICLE 13. TESTS**

The Contractor shall configure and program the APC Kiosks to conform to the Scope of Services. The APC Kiosks will be subject to several tests, including a Final Acceptance test as further defined in the Scope of Services, Implementation Plan, and Acceptance Criteria to be developed and agreed by both parties. To assure System performance, the County's Project Manager will coordinate all testing of the APC Kiosks and provide Final Acceptance upon completion of all milestones and deliverables as outlined in the Scope of Services.

Final acceptance cannot occur until all designated tests from the preliminary acceptance list have been resolved. The selected Proposer shall provide a checklist (report) for all kiosk hardware, software, and training in a form acceptable to the County and CBP. Final acceptance is described as "equipment delivered, installed and tested to meet CBP specifications for the hardware, equipment, software, and CBP interface" to the satisfaction of the County and CBP.

Failure of the APC Kiosks to satisfy the acceptance criteria and conform to the requirements set forth in the Scope of Services by the timeframes set forth in the Implementation Timeline may result in the County withholding payment until satisfactory acceptance is granted to the Contractor.

After Final Acceptance is granted, any modifications, fixes, enhancements, and/or new releases of the APC Kiosks and associated software require separate testing periods and sign-off from the County Project Manager prior to migrating it into the production software. The testing protocol shall be as follows:

- a) Contractor's Project Manager will provide written notice to the County Project Manager of modifications, fixes, enhancements, and/or new releases of the software available for testing.
- b) The Contractor's Project Manager will coordinate all user acceptance testing dates, acceptance criteria, and training for the new functionality for the test group.
- c) The County will be granted five (5) business days or other timeframe agreed to by both parties in writing to perform testing based on the outlined functionality being delivered to the County on the Acceptance Criteria sign off sheet;
- d) The County's Project Manager will provide the Contractor with written notice of acceptance (sign-off) or rejection (with documented material nonconformities in the functionality) within 10 business days, unless more time is needed, in which case the County will notify the Contractor in writing accordingly;
- e) Deficiencies found will be noted on the Acceptance Criteria sign off sheet and the Contractor will be provided an opportunity to correct the issues. The Contractor will be required to provide the County with an updated timeline and work around (fix) within three (3) business days unless additional time is requested in writing and agreed by both parties;
- f) Once the release is accepted, the functionality will be moved into the production module. And updated documentation will be provided to the County;

#### **ARTICLE 14. REVIEWING DELIVERABLES**

The Contractor agrees to submit all Deliverables required to be submitted for review and approval by the County in accordance with the specific requirements in the Scope of Services, and as specified in Appendix D "Acceptance Criteria". The Contractor understands that the County shall have final approval on all Deliverables.

In reviewing the Deliverables, the Contractor understands that the County will provide the Contractor with:

- i. a written notification of the County's approval,
- ii. a written notification that each Deliverable is approved subject to the Contractor providing prompt correction of a minor deficiency, or,
- iii. in the case of a Deliverable that does not meet the requirements of the Agreement, a written notification of the County's disapproval. The County's disapproval notification will state with reasonable detail to sufficiently advise the Contractor of the basis on which the Deliverable was determined to be unacceptable.

The Contractor understands that failure by the County to provide a notice of approval does not constitute approval.

Furthermore:

- a) For each Deliverable made hereunder, the County shall have ten (10) business days, commencing on the first business day after receipt by the County of the Deliverable, to determine whether the Deliverable is approved as submitted, is approved subject to the correction by the Contractor of minor discrepancies, or whether it is unacceptable and therefore disapproved.
- b) Unless an extension of time has been granted by the County, within five business days after receipt of the County's notification of "disapproval", the Contractor shall deliver to the County the necessary revisions

and/or modifications for a second review by the County.

- c) If after the second review period the Deliverable remains unacceptable for the County's approval, the County may direct the Contractor to:
- a. Proceed with the Work subject to the correction of all outstanding deficiencies which led to the County's determination that a Deliverable was not acceptable for approval on or before a specific date established by the County for correcting such deficiency or deficiencies; or,
  - b. Suspend all Work being performed in regard to the execution of the Agreement, except those services necessary for the correction of outstanding deficiencies, until such time that all such outstanding deficiencies have been corrected by the Contractor and resubmitted to the County for approval. Any suspension of the Work under this provision shall not alter the County's right to assess liquidated damages in the event that the Work are not completed in accordance with other provisions of this Agreement.
- d) The County shall have the right to approve or accept part of any Deliverable. Any such approval shall be regarded as partial and conditional upon the County's approval or acceptance of all aspects of the Deliverable. The Contractor must correct any deficiencies within the time the County specifies for such correction in the County's notice concerning a partial approval (including approvals subject to correction of minor deficiencies) or, if no time is given, promptly. If the County does not subsequently approve or accept all aspects of the Deliverable, the earlier conditional acceptance or approval may, in the sole absolute discretion of the County, be regarded as void and of no effect.

#### **ARTICLE 15. SYSTEM WARRANTY**

The Contractor warrants at no cost to the County, for a period of one (1) year from the County's Final Acceptance, that the System(s) and all related components provided by the Contractor under the performance of this Agreement shall:

- (i) Be free from defects in material and workmanship under normal use and remain in good working order, wear and tear excepted;
- (ii) Function properly and in conformity with the warranties in this Agreement;
- (iii) Meet the performance standards set forth in the Scope of Work and the Original Equipment Manufacturer's published specifications.

During the Warranty Period, Contractor agrees to use all reasonable efforts and resources to provide to the County all corrections and/or modifications necessary to correct problems with the Equipment/Devices provided by the Contractor that are reported to Contractor, at no additional cost to the price identified in the Price Schedule or to provide a full refund of any amounts paid under this contract and accept the return of the System in the sole discretion of the County.

During the Warranty Period, Contractor shall enforce the manufacturer's warranty and maintenance obligations relating to the Equipment/Devices and related Software it provides.

In the event the Software System(s) does not satisfy the conditions of performance set forth in the Scope Of Services, Solicitation, and Contractor's proposal, the Contractor's obligation is to provide a Fix or a Work Around at the Contractor's cost and expense, or to provide different equipment, software and services required to attain the performance requirements set forth in the Scope Of Services, Solicitation, and Contractor's proposal or to provide a full refund of any amounts paid under this contract and accept the return of the System in the sole discretion of the County. Failure by the Contractor to comply with warranty provisions hereof may be deemed by the County as a breach of the Contractor's

obligations hereof.

The Contractor shall provide an extended warranty that shall meet the same system warranty coverage as described above and provided during the first year factory warranty period.

**ARTICLE 16. THIRD PARTY WARRANTIES**

In addition to the foregoing warranties, the Contractor hereby assigns to the County, and the County shall have the benefit of, any and all subcontractors' and suppliers' warranties and representations with respect to the Solution provided hereunder. In the Contractor's agreements with subcontractors and suppliers, the Contractor shall require that such parties (i) consent to the assignment of such warranties and representations to the County; (ii) agree that such warranties and representations are enforceable by the County in its own name; and (iii) furnish to the County, the warranties and obligations as set forth in Articles 15 "System Warranty".

**ARTICLE 17. FEES AND PAYMENT**

17.1 Fees. The County shall pay the Fees or other considerations for the Software, Equipment, and Documentation as set forth on Appendix B "Price Schedule" attached hereto. All amounts payable hereunder by the County shall be payable to the Contractor upon invoice as defined in Appendix B. The County shall have no obligation to pay the Contractor or any additional sum in excess of this amount, except for a change and/or modification to the Agreement, which is approved and executed in writing by the County and the Contractor. All Services undertaken by the Contractor prior to the County's approval of this Agreement shall be done at the Contractor's risk and expense.

17.2 Travel. With respect to travel costs and travel related expenses, the Contractor agrees to adhere to CH. 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.

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

**ARTICLE 18. 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 invoice the County periodically, 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. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, 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. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. 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 Aviation Department  
P. O. 025504  
Miami, Florida 33102

Attention: Maurice Jenkins  
Phone: 305-876-0934  
E-mail: mjenkins@miami-airport.com

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

**ARTICLE 19. INDEMNIFICATION AND INSURANCE**

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The 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.

Upon County's notification, the Contractor shall furnish to the Internal Services Department, Procurement Management Division, Certificates of Insurance that 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 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of Miami-Dade County 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, as the certificate holder, must appear on the certificate of insurance.
- 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 per occurrence for bodily injury and property damage.
- D. Professional Liability Insurance in an amount not less than \$1,000,000 per claim.

\*Under no circumstances are Contractors permitted on the Aviation Department, Aircraft Operating Airside (A.O.A) at Miami International Airport without increasing automobile coverage to \$5 million. Only vehicles owned or leased by a company will be authorized. Vehicles owned by individuals will not be authorized. \$1 million limit applies at all other airports.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. 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 "B" as to management, and no less than "Class V" as to financial strength by Best's Insurance Guide, published 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 and are members of the Florida Guaranty Fund.

Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days. If the insurance certificate is received within the specified timeframe but not in the manner prescribed in this Agreement, the Contractor shall have an additional five (5) business days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Contractor shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.

The Contractor shall be responsible for ensuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

#### **ARTICLE 20. MANNER OF PERFORMANCE**

- a) 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 request of the County, the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee

by the Contractor.

- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

#### **ARTICLE 21. 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 22. 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 23. 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 24. 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 25. 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 26. AUDITS**

The County, or its duly authorized representatives or 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 Miami-Dade County Code, 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 27. 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 28. 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.

#### **ARTICLE 29. 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 30. 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 31. 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 32. 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 County Code.
- 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) In the event that the County exercises its right to terminate this Agreement, 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
- f) 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.
- g) All compensation pursuant to this Article are subject to audit.

### **ARTICLE 33. 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 34. 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 35. REMEDIES IN THE EVENT OF DEFAULT**

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for re-procurement of Services, including procurement and administrative costs; and
- c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an injunction.

#### **ARTICLE 36. PATENT AND COPYRIGHT INDEMNIFICATION**

- a) The Contractor shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights in the performance of the Work.
- b) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.

- c) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.
- d) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- e) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

#### **ARTICLE 37. 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 38. 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 39. 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 40. VENDOR REGISTRATION/CONFLICT OF INTEREST**

- a) Vendor Registration : The Contractor shall be a registered vendor with the County – Internal Services Department, Procurement Management 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 County Code)
2. **Miami-Dade County Employment Disclosure Affidavit**  
(Section 2-8-1(d)(2) of the County Code)
3. **Miami-Dade Employment Drug-free Workplace Certification**  
(Section 2-8.1.2(b) of the County Code)
4. **Miami-Dade Disability and Nondiscrimination Affidavit**  
(Section 2-8.1.5 of the County Code)
5. **Miami-Dade County Debarment Disclosure Affidavit**  
(Section 10.38 of the County Code)
6. **Miami-Dade County Vendor Obligation to County Affidavit**  
(Section 2-8.1 of the County Code)
7. **Miami-Dade County Code of Business Ethics Affidavit**  
(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)
8. **Miami-Dade County Family Leave Affidavit**  
(Article V of Chapter 11 of the County Code)
9. **Miami-Dade County Living Wage Affidavit**  
(Section 2-8.9 of the County Code)
10. **Miami-Dade County Domestic Leave and Reporting Affidavit**  
(Article 8, Section 11A-60 11A-67 of the County Code)
11. **Subcontracting Practices**  
(Ordinance 97-35)
12. **Subcontractor /Supplier Listing**  
(Section 2-8.8 of the County Code)
13. **Environmentally Acceptable Packaging**  
(Resolution R-738-92)
14. **W-9 and 8109 Forms**  
(as required by the Internal Revenue Service)
15. **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
16. **Office of the Inspector General**  
(Section 2-1076 of the County Code)
17. **Small Business Enterprises**  
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.
18. **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 : Section 2-11.1(d) of Miami-Dade County Code 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. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

**ARTICLE 42. 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 Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.

- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment without regard to race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, or veteran status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in a conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

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 43. 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, or veteran status, 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 44. 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 45. 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 46. BANKRUPTCY**

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

#### **ARTICLE 47. 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 Miami-Dade

County.

#### **ARTICLE 49. 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.southfloridaworkforce.com/firstsource/>.

#### **ARTICLE 50. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF A PUBLIC AGENCY**

The Contractor shall comply with the state of FL Public Records Law, s. 119.0701, F.S., specifically to: (1) keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service; (2) provide the public with access to public records on the same terms and conditions that the public agency 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) ensure 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) meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency. If the Contractor does not comply with a public records request, the public agency shall enforce contract provisions in accordance with the contract.

#### **ARTICLE 51. 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 52. ANNUAL APPROPRIATION**

The County's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Board of County Commissioners. Cancellation will not cause any penalty or expense to the County, except as to the portions of payments agreed upon and for which funds have been appropriated and budgeted. Service/Maintenance can be cancelled at any time that the Contractor is notified in writing, at least thirty (30) days prior to cancellation. There will be no early termination charges from the Contractor for canceling service/maintenance during the year.

#### **ARTICLE 53. FORCE MAJEURE**

Except as otherwise expressly provided herein, neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that such performance is prevented or delayed by any cause, existing or future, which is not within the reasonable control of such party including, but not limited to, acts of God or the public enemy, fires, explosions, riots, strikes (not including strikes of the Contractor's staff personnel), terrorism or war. Notwithstanding the foregoing, the failures of any of the Contractor's suppliers, subcontractors, or the like shall not excuse the Contractor's performance except to the extent that such failures are due to any cause without the fault and reasonable control of such suppliers, subcontractors, or the like including, but not limited to,

acts of God or the public enemy, fires, explosions, riots, strikes (not including strikes of the Contractor's staff personnel), terrorism or war.

**ARTICLE 54. TECHNICAL SUPPORT PERFORMANCE MEASURES**

The County has established performance metrics in regards to the technical support and maintenance services to be provided under this Agreement. Should the Contractor not meet the required response or resolution timeframes for the reported issues per Section 2, Item 2.8 of the solicitation, the County reserves the option of assessing penalties for failure of the Contractor to meet the response and resolution times required.

Performance measure penalties will be applied at the following rates:

Response Time	\$250 per day
Resolution Time	\$250 per day
Failure of Contractor to meet month service levels as stated herein	\$500 per incident
Failure of Contractor to resolve or implement a County approved work-around within four (4) hours from notification and approval from MDAD of critical or major problems	\$2,500 per day
Three or more documented complaints in any given month from County Management or Users regarding Contractor's responsiveness	\$250 per incident

The County will advise the Contractor in writing of its intent to assess performance measure penalties within 5 days of becoming aware of occurrence of any delay. The time frame for measurement of response time and the resolution time shall begin at the exact time the problem was reported to the Contractor. The time frame for the repair shall begin as soon as the Contractor arrives at the site or begins work on the problem. Partial hours may be treated as whole hours at the discretion of County, and performance penalty amounts may be withheld from payments.

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

Contractor

Miami-Dade County

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Carlos A. Gimenez

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

Title: Mayor

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

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

Attest: \_\_\_\_\_  
Corporate Secretary/Notary Public

Attest: \_\_\_\_\_  
Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form  
and legal sufficiency

\_\_\_\_\_  
Assistant County Attorney

(All Appendixes are to be completed as part of contract negotiations)

- APPENDIX A – SCOPE OF SERVICES**
- APPENDIX B – PAYMENT/PRICE SCHEDULE**
- APPENDIX C – IMPLEMENTATION TIMELINE**
- APPENDIX D – DELIVERABLE ACCEPTANCE FORMS**
- APPENDIX E – ESCROW AGREEMENT**
- APPENDIX F – U.S. CUSTOMS AND BORDER PROTECTION “AUTOMATED PASSPORT CONTROL: BUSINESS REQUIREMENTS” VERSION 15, April 2014**
- APPENDIX G – U.S. CUSTOMS & BORDER PATROL “AUTOMATED PASSPORT CONTROL SERVICE TECHNICAL REFERENCE MANUAL (VERSION 2), DOCUMENT NUMBER 3209000-TRM V2**