



INTERNET ACCESS, COLOCATION, AND MANAGED ROUTER SERVICES

THIS AGREEMENT ("AGREEMENT") IS MADE AND ENTERED INTO BY AND BETWEEN 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"), AND TERREMARK NORTH AMERICA, INC, A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF FLORIDA, HAVING ITS PRINCIPAL OFFICE AT 2 SOUTH BISCAYNE BOULEVARD, SUITE 2800, MIAMI, FL 33131 (HEREINAFTER REFERRED TO AS THE "CONTRACTOR").

RECITALS

Contractor shall provide the required Internet Access, Colocation, and Managed Router Services as required by the County as per the conditions set forth in this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1 "Service and Support" shall mean the services and support required for the County to achieve optimal bandwidth performance and to obtain a secure colocation space.
- 1.2 The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions and all associated addenda and all other attachments hereto and all amendments issued hereto.
- 1.3 "ETSD" shall mean the Enterprise Technology Services Department located at 10300 SW 72nd Street, Suite # 358, Miami, FL 33173.
- 1.4 "NAP of the Americas" or "NAP" shall mean the Network Access Point of the Americas located at 50 NE 9th Street, Miami, FL 33132.
- 1.5 "NOC" shall mean the Network Operations Center located at the NAP of the Americas.
- 1.6 "SLA" shall mean the Contractor's Service Level Agreement.

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) Payment Schedule (Appendix B), and any associated addenda and attachments.

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 attached hereto as Appendix A, ("Scope of Services" or "SOW") 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 except as otherwise set forth in applicable Scope of Services or Service Order. 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, but reserves the right to decline the implementation of any and all changes should they be deemed unreasonable by the Contractor. Additionally, the Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County Provided that said mutually agreed upon changes are within the Scope of Services and/or any and all additional costs associated with such changes are borne 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. AGREEMENT TERM

The Agreement shall become effective on the date that it is signed by the County or the Contractor, whichever is later and shall continue through the last day of the 24th month. The County, at its sole discretion, reserves the right to exercise the option to renew this Agreement for two (2) additional two (2) year periods.

The County also reserves the right to exercise its option to extend this Agreement for up to one hundred-eighty (180) calendar days beyond the current Agreement period or beyond any of the renewals. The



County will notify the Contractor in writing of the extension. This Agreement may be further 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. SERVICES TO BE PROVIDED

6.1 Contractor Obligations. Contractor shall provide the following services set forth in the Scope of Services as required by the County.

Services include:

- a) Colocation Space
- b) Managed Router Services (Internet Service)
- c) Technical Support

6.2 Telephone and E-mail Support. For the term of this Agreement, Contractor shall provide telephone and e-mail support in the following manner: Queries for specific technical problems and failures are possible at any time. For this purpose, the County will generally leave a message indicating the exact problem description and a classification in the following priority and error levels:

- a) Critical – County impacting, no work around possible
- b) Major – County impacting, work around possible
- c) Minor – Not County impacting County critical business

The Contractor’s telephone support contacts are as follows:

Primary Contact:

Name: Service Center
Phone Number: 305-328-8000
Fax Number:
Email: servicecenter@terremark.com

6.3 Subject Matter of Support Services. The subject matter of support services in clause 6.1 above are the alleged communication issues, power issues, environmental issues, and/or any other issues relating to the colocation space.

ARTICLE 7. FEES AND PAYMENT

7.1 Services. The County shall pay for the services described in Appendix A “Scope of Services” as set forth on Appendix B “Payment Schedule” attached hereto. All amounts payable hereunder by the County shall be payable on a monthly basis in accordance with the fees outlined in Appendix B. The County shall have no obligation to pay the Contractor or any additional sum in excess of this amount, except for burst changes 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 before County’s approval of this Agreement shall be at the Contractor’s risk and expense.

7.2 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.



7.3 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.

7.3.1 Electrical Power Rates. Electrical power rates shall be reviewed annually by the County and the Contractor. The Contractor reserves the right to re-evaluate the Monthly Recurring Power Fee rates charged to the County and either increase or decrease the rates charged in accordance with the Consumer Price Index for electricity (non-seasonally adjusted) for All Urban Consumers in the Miami-Fort Lauderdale, Florida area. The Contractor agrees that the rates charged to the County, regardless of the CPI index escalation, will not increase more than 5% annually throughout the term of the Agreement including any extensions or renewals exercised in the sole discretion of the County. Upon adjustment, the Monthly Recurring Power Fee rates charged to the County shall remain in effect for twelve months and Appendix B shall be updated.

7.4 Invoices. All invoices issued by the Contractor, shall be supported by receipt bills or other documents reasonably required by the County. Invoices shall show the County's Agreement 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 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 shall be forty-five 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 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 Manager, 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.

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

ETSD Finance
Accounts Payables
5680 SW 87th Ave
Miami, Florida 33173

Attention: Erick Gomez

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

ARTICLE 8. INSURANCE AND INDEMNIFICATION

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. 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. Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

The Contractor shall furnish to the Vendor Assistance Section within the Department of Procurement Management, Administration Division, 111 NW 1st Street, Suite 1300, Miami, Florida 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the vendor as required by Florida Statute 440.
- B. Public Liability Insurance on a comprehensive basis in an amount not less than \$300,000 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.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.

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 the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

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

Certificates will indicate no modification or change in insurance shall be made without thirty (30) days in advance notice to the certificate holder as stated in the ACORD certificate.

NOTE: DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE.

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

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

fifteen (15) calendar days after County notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar 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 twenty (20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

The Contractor shall be responsible for assuring 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 within five (5) business days 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 9. DEFAULT AND TERMINATION

9.1 Termination. The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its obligations under this Agreement with the County through fraud, misrepresentation or material misstatement.

- a) The County may, as a further sanction, terminate or cancel any other Agreement(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.
- b) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its obligations with the County under this Agreement 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.

9.2 Termination for Convenience. 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 and in such event:

- a) 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) take no action which will increase the amounts payable by the County under this Agreement; and
- b) In the event that the County exercises its right to terminate this Agreement for convenience only, the Contractor will be compensated as stated in the payment Articles, herein, for the portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
- c) All compensation pursuant to this Article are subject to audit.



9.3 Default. Notwithstanding the terms set forth in Articles 27 or 28, this Agreement may be terminated by the non-defaulting party if any of the following events of default occur: (1) if either party materially fails to perform or comply with this Agreement or any provision hereof; (2) if either party fails to strictly comply with the provisions of Article 30 (Confidentiality) or makes an assignment in violation of Article 11 (Nonassignability); (3) if the Contractor becomes insolvent or bankrupt, or makes an assignment for the benefit of creditors.

9.4 Effective Date of Termination. Termination due to a material breach shall be effective on notice. In all other cases, termination shall be effective thirty (30) days after notice of termination to the defaulting party if the defaults have not been cured within such thirty (30) day period.

ARTICLE 10. NOTICES

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 County
Enterprise Technology Services Department
10300 SW 72nd Street
Suite # 358
Miami, FL 33173

Attention: Erick Gomez
Phone: (305) 596-8404
Fax:
E-mail: Shea1@miamidade.gov

and to the Agreement Manager:

Miami-Dade County
Department of Procurement Management
111 N.W. 1st Street, Suite 1300
Miami, FL 33128-1974

Attention: *Erick Martinez*
Phone: (305) 375-1075
Fax: (305) 375-5688
E-mail: emtnez@miamidade.gov

(2) To the Contractor

Terremark North America, Inc.
One Biscayne Tower
2 S. Biscayne Blvd, Ste. 2800
Miami, FL 33131

Attention: *Legal Department*
Phone: (305) 961-3200



Email: contracts@terremark.com

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

ARTICLE 11. NONASSIGNABILITY

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 12. INSPECTOR GENERAL REVIEWS

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

12.2 Miami-Dade County Inspector General Review. According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County Agreements, throughout the duration of said Agreements, except as otherwise provided below. The cost of the audit for this Agreement shall be one quarter (1/4) of one (1) percent of the total Agreement amount which cost shall be included in the total Agreement amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all Agreement renewals and extensions.

12.3 Exception. The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following Agreements: (a) IPSIG Agreements; (b) Agreements for legal services; (c) Agreements for financial advisory services; (d) auditing Agreements; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance Agreements; (h) revenue-generating Agreements; (i) Agreements where an IPSIG is assigned at the time the Agreement is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted Agreement at the time of award

12.4 Inspector General Powers. Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County Agreements including, but not limited to, those Agreements specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust Agreements, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the

project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Agreement. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with Agreement specifications and to detect fraud and corruption.

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

ARTICLE 13. GOVERNING LAW

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

ARTICLE 14. COUNTY USER ACCESS PROGRAM (UAP)

14.1 User Access Fee. Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Agreement is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Agreement, or any Agreement resulting from this solicitation and the utilization of the County Agreement price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all Agreement usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

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

14.2 Joint Purchase. Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County Agreement pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Contractor must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Contractor participation in this joint purchase portion of the UAP, however, is voluntary. The Contractor shall notify the ordering entity, in writing, within 3 work days of receipt of an order, of a decision to decline the order.



For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Contractor shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

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

14.3 Contractor Compliance. If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with this Agreement.

ARTICLE 15. VENDOR REGISTRATION AND FORMS/CONFLICT OF INTEREST

a) Vendor Registration

The Contractor shall be a registered vendor with the County – Department of Procurement Management, 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 County Employment Drug-free Workplace Certification**
(Section 2-8.1.2(b) of the County Code)
4. **Miami-Dade County 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. **SubLicensor /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 as amended by Ordinance 00-1, requires 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 from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic 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 and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 16. 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 17. SEVERABILITY

If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

ARTICLE 18. MANNER OF PERFORMANCE

18.1 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 and applicable Scope of Services or Service Order. 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. 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 of its personnel, including subcontractors employees, 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. The Contractor agrees that such removal of any of its employees, including subcontractors, does not require the termination or demotion of any employee or subcontractor by the Contractor.

18.2 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.

18.3 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. Except for the express warranties



herein Contractor makes no other warranties express or implied, including the implied warranties of merchantability and fitness for a particular purpose, title, or otherwise.

18.4 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.

18.5 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 19. EMPLOYEES ARE THE RESPONSIBILITY 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 Contractor employee shall have and wear proper identification.

ARTICLE 20. 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 21. 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 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 obey and follow 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 Manager 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 Manager'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 Manager within ten (10) days of the occurrence, event or act out of which the dispute arises.

- e) The County Manager 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 Manager 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 Manager 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 Manager is entitled to exercise discretion or judgment 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 Manager, 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 22. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendixes 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 23. 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 24. 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 County Ordinance No. 03-2, 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 25. 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 material 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. If requested, Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. 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 26. 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 27. 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, except in case for which an extension of time is provided, 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 materially failed in the performance 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 time frame 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 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 time frame, the County may:
 - i. treat such failure as a repudiation of this Agreement;
 - 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 28. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION

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 29. REMEDIES IN THE EVENT OF DEFAULT

Liability Limitation. Under no circumstances will either party be liable to the other party for consequential, indirect, special, punitive, or incidental damages or lost profits, business, revenue, goodwill, or anticipated saving, whether foreseeable or unforeseeable, even if such party shall have been informed of the possibility of such damages. Based on claims of the other party or any other person or entity arising out of breach or failure of express or implied warranty, breach of contract, misrepresentation, negligence, strict liability in tort, failure of any remedy to achieve its essential purpose, or otherwise. Further, except with respect to liability under article 7, in no event will either party or their suppliers be liable for damages or losses that exceed, in the aggregate, the amount of fees paid for services that gave rise to such damages or losses in the 60 day period prior to the date on which the event giving rise to such damages or losses occurred.

ARTICLE 30. 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 specifically for County in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, may 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 that is confidential 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 31. STATEMENT OF WORK

Prior to the commencement of any additional Services outside of the Scope of Services as attached in Appendix A, the County and the Contractor shall mutually agree upon the terms and conditions required to complete a SOW for the specific Services to be performed. Each SOW executed hereunder shall



automatically incorporate the terms and conditions of this Agreement.

ARTICLE 32. DOCUMENTATION

The documentation delivered to the County will consist any and all operator's and user's manuals, training materials, guides, listings, design documents, specifications, flow charts, data flow diagrams, commentary, and other materials and documents that explain the performance, function or operation of individual programs and the interaction of programs within the system; control file and scripts used to compile, link, load and/or make the applications and systems; test scripts, test plans and test data and other materials for use in conjunction with the applicable Software or Hardware ("Documentation").

The Documentation will in all cases be fully applicable to the use of the Programs with the Designated Hardware and Software Systems, and will identify and reflect any particular features of the Equipment which may affect the normal use and operation of the Programs. The Contractor shall deliver to the County ten copies of said Documentation. The County will have the right, as part of the license granted herein, to make as many additional copies of the Documentation as it may deem necessary.

ARTICLE 33. PERFORMANCE STANDARDS

33.1 The services provided by the Contractor shall meet the performance standards described below. They shall be provided at the dependability levels specified below:

1. Technical Support available 365x24x7
2. Full bandwidth SLA of 99.99% availability
3. Electrical power SLA of 100% availability 365x24x7
4. Climate not to exceed 75° Fahrenheit
5. Relative humidity to be between 45% and 55% humidity
6. Maximum dew point of 59° Fahrenheit

33.2 Outages. An unplanned disruption in service to the County's equipment located in the colocation space is considered an outage. In the event of an outage exceeding one (1) hour during any calendar day, the County shall be credited for that entire day of service equivalent to 1/30th of the monthly charge for the service. The Contractor shall notify the County's project manager within one (1) hour after the start of an outage with an estimated timeline of when services will be restored.

33.3 Planned Outages. In the event that the Contractor must perform maintenance or other work that will cause an outage to the County's equipment, the Contractor shall provide notice to the County's project manager at a minimum of forty-eight (48) hours in advance.

County shall not place a load upon any floor of the Premises that exceeds either the load per square foot that such floor was designed to carry or that is allowed by law. We reserve the right, subject to reasonable industry standards, to prescribe the weight and position of all equipment. County will not exceed peak electrical load of 60 Watts per square foot in County's space without our consent. County will not exceed 75% of the rated capacity of any individual circuit.

ARTICLE 34. EXTENSION OF TIME

- a. If the Contractor is delayed at any time hereunder due to any of the following then the affected schedule or the required performance of Work may be extended by the County in the reasonable exercise of its discretion for such reasonable time as the County may determine, subject to the following conditions:



- i. The cause of the delay is beyond the Contractor's control and arises without its fault or negligence, and arises after the execution hereof and neither was nor could have been anticipated by the Contractor by reasonable investigation; and
 - ii. The completion of the Work will be actually and necessarily delayed by the causes set forth in "i" above; and
 - iii. The effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures whether before or after the occurrence of the cause of delay; and
 - iv. The Contractor has provided a written request and other information to the County, as described in subsection (d) below, within ten (10) days after the time the Contractor knows or reasonably should have known of any cause which might result in a delay for which the Contractor may request an extension of time. The Contractor shall specifically state in such notice that an extension is or may be requested and identify the cause of the delay, describing the nature and its effect on the completion of the affected portions of the Work identified in the notice. If the Contractor shall fail to give the foregoing notice, the right to request an extension for such cause shall be waived. All of the conditions of this subsection (a) must be met in order to be deemed an Excusable Delay.
- b. All references in this Article to the Contractor shall be deemed to include subcontractors and suppliers, all of whom shall be considered as agents of the Contractor.
 - c. The period of any extension of time shall be only that which is necessary to make up the time actually lost. The County reserves the right to rescind or shorten any extension previously granted if the County subsequently determines that any information provided by the Contractor in support of its request for an extension of time was erroneous or that there has been a material change in the facts stated.
 - d. The County may require the Contractor to furnish such additional information or documentation, as the County shall reasonably deem necessary or helpful in considering a extension request. The Contractor understands an extension of time will not be granted unless the Contractor affirmatively demonstrates to the County's reasonable satisfaction that the circumstances shown justify such extension.
 - e. Within thirty (30) days of its receipt of all information and documentation as may be required by the County, the County shall advise the Contractor of its decision on such requested extension. Notwithstanding the foregoing, where it is not reasonably practicable for the County to render its decision within such thirty (30) day period, it shall, prior to the expiration of such period, advise the Contractor that it will require additional time and the approximate date upon which it expects to render such decision.
 - f. Since the granting of an extension of time may materially alter the scheduling plans and other actions of the County and since, with sufficient notice, the County might, if it should so elect, attempt to mitigate the effect of the delay for which an extension of time might be claimed, and since mere oral notice may cause a dispute as to the existence or substance thereof, the giving of written notice as required in subsection (a.) (iv.) above shall be a condition precedent to the Contractor's rights hereunder.
 - g. Should any person seek a restraining order, preliminary injunction or an injunction, of which the Contractor becomes aware, which may delay the Services, the Contractor shall promptly give the County a copy of all legal papers received or prepared or received by the Contractor in connection with such action or proceeding.



- h. Neither permitting the Contractor to proceed with the Work subsequent to any missed schedule or performance of any Work (as such date may have been extended pursuant to Article 35 "Extension of Time Not Cumulative") nor the making of any payments to the Contractor shall compromise the County's contractual right to assess liquidated damages or to declare the Contractor in default.

ARTICLE 35. EXTENSION OF TIME NOT CUMULATIVE

In the event the Contractor shall be delayed concurrently by two or more of the causes identified in Article 34 "Extension of Time" above, the Contractor shall be entitled to a separate extension of time for each one of the causes but only one period of extension shall be granted for the delay. In addition, the Contractor shall not be entitled, by reason of a delay, to an extension of time for the completion of the overall Work unless the overall Work is necessarily affected by the delay. Accordingly, in the event of a delay, the Contractor shall proceed continuously and diligently with the performance of the unaffected portions of the Work.

ARTICLE 36. NO DAMAGES FOR DELAY

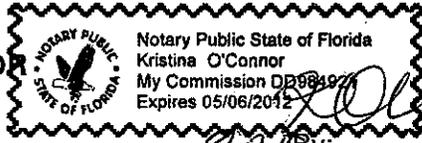
The Contractor hereby agrees to make no claim for damages for delay, whether contemplated or not contemplated, in the performance hereunder occasioned by any acts or omissions to act of the County, or any of its representatives or other contractors, and agree that any such claim shall be fully compensated for by an extension of time to complete performance of the Work, as provided for in Articles 34 and 35 "Extension of Time", Extension of "Time Not Cumulative", and "No Damages for Delay".

ARTICLE 37. 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.

IN WITNESS WHEREOF; the parties have executed this Agreement effective as of the Agreement date herein set forth below.

CONTRACTOR



MIAMI-DADE COUNTY

By:

[Signature]

[Signature]

[Signature]

Name:

JOSE A. SEGRERA

Name:

Howard Piper

Title:

CFO

Title:

Special Assistant

Date:

9/2/10

Date:

December 30, 2010

Attest:

[Signature]

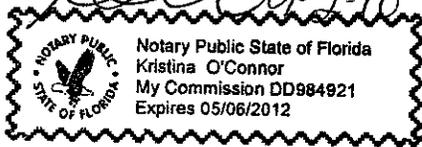
Attest:

[Signature]

Corporate Secretary

Clerk of the Board

Corporate Seal



Approved as to form and legal sufficiency.



[Signature]
Assistant County Attorney



APPENDIX A – SCOPE OF SERVICES

OVERVIEW

Miami-Dade County requires Internet connectivity, managed router services and colocation space for its daily operations. The Contractor shall provide the following services at the NAP of the Americas facility:

Description	Estimated Quantity
120v AC, SP, 10 amp, CPS (A)	2
120v AC, SP, 20 amp, (A)	36
120v AC, SP, 20 amp, CPS (A)	2
120v AC, SP, 30 amp, CPS (A)	6
208v AC, 3P, 30 amp, CPS (A & B)	1
208v AC, 3P, 30 amp, CPS (A)	4
208v AC, 3P, 50 amp, CPS (A & B)	1
208v AC, 3P, 60 amp, CPS (A & B)	1
208v AC, SP, 30 amp, CPS (A & B)	1
48v DC, 80 amp (A & B)	1
Colocation Space (per sq ft)	600
Cross Connect GigE	2
Cross Connect POTS	3
MRS: Managed Router Services CIR	315
Burst Charges	Variable

SUPPORT

Contractor’s Network shall provide 24x7x365 support services for problem resolution.

COLOCATION SPACE REQUIREMENTS

The colocation space houses the Miami-Dade County’s Enterprise Information Technology infrastructure. This includes, but is not limited to: servers, storage arrays, backup infrastructure, and the supporting network infrastructure. For disaster recovery purposes, this equipment must be in a secure and stable location. To safeguard the network infrastructure, the colocation space shall provide the following features:

- Dedicated, locked, and caged 600 square-foot of contiguous space within the NAP facility
- 24x7 security including:
 - Camera monitoring
 - Stationed and Roving security guards
 - Keycard access throughout facility
- Fully redundant commercial power feeds to provide auxiliary power for extended outages
- Fire suppression system
- Smoke detectors



APPENDIX A – SCOPE OF SERVICES

- Redundant climate cooling infrastructure
 - Climate not to exceed 75° Fahrenheit
 - Relative humidity to be between 45% and 55% humidity
 - Maximum dew point of 59° Fahrenheit
- Located above flood plain and evacuation zones

INTERNET CONNECTIVITY REQUIREMENTS

Contractor shall provide the County with “Managed Router Services”. This service ensures that the County’s network infrastructure points to the ISP’s with the greatest available bandwidth. Managed Router Services creates connection redundancies so the County’s internet connection is stable and reliable. Contractor’s service level agreement is 99.99% internet connection availability 365x24x7.

Connectivity requirements:

- Redundant fiber connectivity to NAP facility
- Two (2) SX Gigabit Ethernet connections with 350Mb Committed Information Rate (CIR) to a minimum of four (4) Tier-1 Internet Service Providers (ISP) with a combined Service Level Agreement (SLA) of 99.99%.
- Managed Border Gateway Protocol services with redundant meshed connections to all ISP providers and the routing of all County IP addresses.
- Registration and hosting of the County’s Autonomous System Number used to identify IP address blocks.

ELECTRICAL POWER REQUIREMENTS

Contractor shall deliver conditioned electrical power to the County’s equipment by means of dedicated electrical circuits. Miami-Dade County anticipates the usage of the following circuit types illustrated on the following chart:

Description	Estimated Quantity
120v AC, SP, 10 amp, CPS (A)	2
120v AC, SP, 20 amp, (A)	36
120v AC, SP, 20 amp, CPS (A)	2
120v AC, SP, 30 amp, CPS (A)	6
208v AC, 3P, 30 amp, CPS (A & B)	1
208v AC, 3P, 30 amp, CPS (A)	4
208v AC, 3P, 50 amp, CPS (A & B)	1
208v AC, 3P, 60 amp, CPS (A & B)	1
208v AC, SP, 30 amp, CPS (A & B)	1
48v DC, 80 amp (A & B)	1



APPENDIX B – PAYMENT SCHEDULE

PAYMENT SCHEDULE

The following rate table illustrates the monthly fees that will be charged to the County for the services requested:

Description	Unit Price	Estimated Quantity	Extended Price
120v AC, SP, 10 amp, CPS (A)	\$N/A	2	\$N/A
120v AC, SP, 20 amp, (A)	\$203	36	\$7308
120v AC, SP, 20 amp, CPS (A)	\$203	2	\$406
120v AC, SP, 30 amp, CPS (A)	\$263	6	\$1,578
208v AC, 3P, 30 amp, CPS (A & B)	\$2352	1	\$2,352
208v AC, 3P, 30 amp, CPS (A)	\$1176	4	\$4704
208v AC, 3P, 50 amp, CPS (A & B)	\$3724	1	\$3,724
208v AC, 3P, 60 amp, CPS (A & B)	\$4466	1	\$4,466
208v AC, SP, 30 amp, CPS (A & B)	\$1575	1	\$1,575
48v DC, 80 amp (A & B)	\$1288	1	\$1,288
Colocation Space (per sq ft)	\$34.50	600	\$20,700
Cross Connect GigE	\$365	2	\$730
Cross Connect POTS	\$50	3	\$150
MRS: Managed Router Services CIR	\$15	315	\$4,725
Burst Charges	\$20		

Monthly Total: \$54,706

OPTIONAL SERVICES

Managed Router Services (CIR): The maximum burst capacity is 3 times CIR unless otherwise limited by your connection; the burst cost is 1.3 times the contracted CIR rate (\$/Mb) unless otherwise indicated.

Upon execution of this contract, the following Space pricing as set forth in the table below shall become effective:

Description - Additional Floor Space	Price per Sq ft of Floor Space – Monthly Recurring Cost
Colocation Floor Space	\$34.50
7' Lockable Cabinet – located on the main collocation floor – outside the County's Cage. Includes 20amp, 120V, A+B power circuit.	\$1,280



APPENDIX B – PAYMENT SCHEDULE

Upon execution of this contract, the Power pricing as set forth in the table below shall become effective:

Description	Recurrence	NAPMIA – Non-Recurring Cost	NAPMIA - Monthly Recurring Cost
Power: 120vAC, SP, 20amp, CPS (A & B)	MRC	\$520	\$406
Power: 120vAC, SP, 20amp, CPS (A)	MRC	\$260	\$203
Power: 120vAC, SP, 30amp, CPS (A & B)	MRC	\$1,040	\$526
Power: 120vAC, SP, 30amp, CPS (A)	MRC	\$520	\$263
Power: 120vAC, SP, 50amp, CPS (A & B)	MRC	\$1,560	\$1,246
Power: 120vAC, SP, 50amp, CPS (A)	MRC	\$780	\$623
Power: 208vAC, SP, 20amp, CPS (A & B)	MRC	\$520	\$994
Power: 208vAC, SP, 20amp, CPS (A)	MRC	\$260	\$497
Power: 208vAC, SP, 30amp, CPS (A & B)	MRC	\$1,040	\$1,575
Power: 208vAC, SP, 30amp, CPS (A)	MRC	\$520	\$788
Power: 208vAC, SP, 50amp, CPS (A & B)	MRC	\$1,560	\$2,485
Power: 208vAC, SP, 50amp, CPS (A)	MRC	\$780	\$1,246
Power: 208vAC, SP, 60amp, CPS (A & B)	MRC	\$1,560	\$2,982
Power: 208vAC, SP, 60amp, CPS (A)	MRC	\$780	\$1,491
Power: 208vAC, 3P, 30amp, CPS (A)	MRC	\$780	\$1,176
Power: 208vAC, 3P, 30amp, CPS (A & B)	MRC	\$1,560	\$2,352
Power: 208vAC, 3P, 60amp, CPS (A)	MRC	\$1,170	\$2,233
Power: 208vAC, 3P, 60amp, CPS (A & B)	MRC	\$2,340	\$4,466

Note: In the event utility power rates increase on a yearly basis by more than 5% above the current levels charged to Licensor by FPL, Licensor reserves the right to increase the Monthly Recurring Power Fee charged to Licensee by that same percentage. In the event of an increase by FPL of more than 5% annually, Licensor agrees that the maximum raise to Licensee's rate shall be 5% annually.

Upon execution of this contract, the Cooling Premium pricing as set forth in the table below shall become effective:

Based on the quoted power circuits installed in the cage, the installation of additional power in this cage may require additional fees associated with additional Cooling Premiums. The following Cooling Premiums would apply when the deployed power reaches the following tiers:

Description - Cooling Premium Pricing Tiers	Price per Sq ft of Floor Space - Monthly Recurring Cost
120-160 watts/sqft	\$2
160-200 watts/sqft	\$4
200-240 watts/sqft	\$6
240-280 watts/sqft	\$8
280-320 watts/sqft	\$10

Based on the quoted power circuits installed in a cabinet located on the main collocation floor, not within a Licensee cage, additional fees associated with additional Cooling Premiums may be required. The following Cooling Premium would apply based on 120+ watts per sq ft when spread of

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20 sq ft (the square foot utilized by a cabinet).

Description - Cooling Premium Pricing Tiers	Price per Sq ft of Floor Space - Monthly Recurring Cost
120+ watts/sqft	\$2

Upon execution of this contract, the Cabinet and Relay Rack pricing as set forth in the table below shall become effective:

Description – Relay Racks and Cabinets	Price per Sq ft of Floor Space – Non-Recurring Charge
Rack, relay, 7', 4-post, installed	\$1,000
Relay Rack or cabinet supplied by Licensee, installation only	\$450
7' Lockable Cabinet – located on the main collocation floor	\$1,280

Upon execution of this contract, the Managed Router Services pricing as set forth in the table below shall become effective:

Description - Managed Router Service Pricing Tiers	CIR - Per Mbps (Monthly Recurring Cost)	Burst Rate - Per Mbps
Committed Bandwidth (1-10 Mbps Tier)	\$25	\$33
Committed Bandwidth (11-20 Mbps Tier)	\$25	\$33
Committed Bandwidth (21-30 Mbps Tier)	\$25	\$33
Committed Bandwidth (31-40 Mbps Tier)	\$25	\$33
Committed Bandwidth (41-50 Mbps Tier)	\$25	\$33
Committed Bandwidth (51-60 Mbps Tier)	\$20	\$26
Committed Bandwidth (61-70 Mbps Tier)	\$20	\$26
Committed Bandwidth (71-80 Mbps Tier)	\$20	\$26
Committed Bandwidth (81-90 Mbps Tier)	\$20	\$26
Committed Bandwidth (91-100 Mbps Tier)	\$20	\$26
Committed Bandwidth (101-110 Mbps Tier)	\$20	\$26
Committed Bandwidth (111-120 Mbps Tier)	\$20	\$26
Committed Bandwidth (121-130 Mbps Tier)	\$20	\$26
Committed Bandwidth (131-140 Mbps Tier)	\$20	\$26
Committed Bandwidth (141-150 Mbps Tier)	\$20	\$26
Committed Bandwidth (151-160 Mbps Tier)	\$15	\$20
Committed Bandwidth (161-170 Mbps Tier)	\$15	\$20
Committed Bandwidth (171-180 Mbps Tier)	\$15	\$20
Committed Bandwidth (181-190 Mbps Tier)	\$15	\$20



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Description - Managed Router Service Pricing Tiers	CIR - Per Mbps (Monthly Recurring Cost)	Burst Rate - Per Mbps
Committed Bandwidth (191-200 Mbps Tier)	\$15	\$20
Committed Bandwidth (201-210 Mbps Tier)	\$15	\$20
Committed Bandwidth (211-220 Mbps Tier)	\$15	\$20
Committed Bandwidth (221-230 Mbps Tier)	\$15	\$20
Committed Bandwidth (231-240 Mbps Tier)	\$15	\$20
Committed Bandwidth (241+ Mbps Tier)	\$15	\$20
Committed Bandwidth (241 – 499 Mbps Tier)	\$15	\$20
Committed Bandwidth (500 – 750 Mbps Tier)	\$14.50	\$19
Committed Bandwidth (750-999 Mbps Tier)	13.50	\$18
Committed Bandwidth (1 Gbps + Tier)	\$10	\$13

Note: The cost of bandwidth bursting is based on the current committed price and is calculated as 1.3 times the committed price.

Manager Router Services	Non-Recurring Cost (Install)
Managed Router Services: 10 GbE (10,000 Mbps) Managed Router Services - setup	\$1,250
Managed Router Services: FastE (100 Mbps) Managed Router Services - setup	\$400
Managed Router Services: GigE (1,000 Mbps) Managed Router Services - setup	\$1,250

Note: Managed Router Platform is via either redundant Fast Ethernet connections (using Cat 6 RJ45 connections) or via redundant 1Gbps via MM Fiber connections or 10Gbps connections.

Upon execution of this contract, the Intra Facility Connection pricing as set forth in the table below shall become effective:

Description - Intra Facility Cables	Non-Recurring Cost (Install)
Multi-Mode Fiber	
IFC: Fiber, multi-mode, 6-count, w/SC connectors	\$700
IFC: Fiber, multi-mode, 12-count, w/SC connectors	\$1,200
IFC: Fiber, multi-mode, 24-count, w/SC connectors	\$2,200
IFC: Fiber, multi-mode, 48-count, w/SC connectors	\$4,200
Single Mode Fiber	
IFC: Fiber, single mode, 6-count, w/SC connectors	\$700
IFC: Fiber, single mode, 12-count, w/SC connectors	\$1,200
IFC: Fiber, single mode, 24-count, w/SC connectors	\$2,200
IFC: Fiber, single mode, 48-count, w/SC connectors	\$4,200
CAT-6	



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Description - Intra Facility Cables	Non-Recurring Cost (Install)
IFC:CAT6, UTP-setup(E1 Panel)	\$295
IFC:CAT6, UTP-setup(Ethernet Panel)	\$295
IFC:CAT6,UTP-setup(T1,POTS,ISDN panel)	\$295
COAX	
IFC: COAX 734, 6 count (BNC)	\$850
IFC: COAX 734, 12 count (BNC)	\$1,670
IFC: COAX 735, 6 count (BNC)	\$850
IFC: COAX 735, 12 count (BNC)	\$1,670

Note: Intra Facility Connections (IFCs) are used to connect a Licensee’s collocated space to the NAP Meet Point Room. The Meet Point Room is where the Licensee will have the ability to establish Cross Connects and network connectivity with various Carriers and Licensees located within Licensor facility.

Upon execution of this contract, the Patch Panel pricing as set forth in the table below shall become effective:

Description - Patch Panels	Non-Recurring Cost (Install)
Equipment: Panel, patch, 19", 100-termination DS1 panel Wire-wrap/RJ	\$292
Equipment: Panel, patch, 19", 12-port BNC DS3	\$168
Equipment: Panel, patch, 19", 64-termination DS1 panel - Wirewrap/RJ	\$224
Equipment: Panel, patch, 19"/23", 48-port BNC DS3	\$364
Equipment: Panel, patch, 24-port DS1, Punch-down/RJ (Leviton)	\$96
Equipment: Panel, patch, 24-port DS1, Punch-down/RJ (Siemon)	\$188
Equipment: Panel, patch, 24-port Ethernet -RJ/RJ (Panduit)	\$172
Equipment: Panel, patch, 24-port Ethernet -RJ/RJ (Semtron)	\$120
Equipment: Panel, patch, 28-port DS1, Wire-wrap/RJ	\$388
Equipment: Panel, patch, 28-port Ethernet -RJ/RJ	\$184
Equipment: Panel, patch, 48-port DS1, Punch-down/RJ	\$288
Equipment: Panel, patch, 48-port Ethernet -Punch-down/RJ	\$316
Equipment: Panel, patch, 84-port DS1, Wire-wrap/Wire-wrap	\$1,524

Upon execution of this contract, the Enterprise Cloud pricing as set forth in the table below shall become effective:

Description	Qty	Monthly Price
Enterprise Cloud Resource Bundle 5 GHz Processor / 10GB Memory	1	\$2,000
Enterprise Cloud Resource Bundle 10 GHz Processor / 20GB Memory	1	\$3,500
Enterprise Cloud Resource Bundle 25 GHz Processor / 50GB Memory	1	\$8,125



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Description	Qty	Monthly Price
Enterprise Cloud Resource Bundle 50 GHz Processor / 100GB Memory	1	\$15,000
Enterprise Cloud Resource Bundle 1 GHz Processor / 2GB Memory (Add-on only)	1	\$425
Enterprise Cloud Network Resources (included with Bundle)	1	N/A
Additional 5 Public IP's	1	\$20
Additional 10 Public IP's	1	\$30
Additional 25 Public IP's	1	\$50
Enterprise Cloud Security Resources (included with Bundle)	1	N/A
Bandwidth per 1 Mbps (1-50Mbps Tier)	1	\$50
Enterprise Cloud Storage Resources 100GB Fiber Storage	1	\$100
Enterprise Cloud Storage Resources 250GB Fiber Storage	1	\$185
Enterprise Cloud Storage Resources 1000GB Fiber Storage	1	\$600
Enterprise Cloud Backup Resources 100GB Tier-2 Backup Storage	1	\$75

Note: Additional discounts may apply to the Enterprise Cloud based on the term of the agreement and promotional incentives.

Log Aggregation and Intrusion Detection Managed Security Operations Center Services

Licensor is pleased to submit the following response to the LICENSEE's request for PCI-Centered Efforts for Security Operations Center Services.

Licensor's network security personnel also possess CISSP, CISA, and Global Information Assurance Certifications (GIAC) that address broad based security essentials such as intrusion detection, incident handling, firewalls and perimeter protection, forensics, hacker techniques, and Windows and UNIX operating system security and secure software and application coding.

Licensor is in a unique position to meet the LICENSEE's security objectives:

- Licensor will provide a Security Operations Center that will protect LICENSEE systems and data by detecting and responding to suspicious activity, intrusion attempts, malicious activity, and adverse security events.
- Licensor will operate a SOC that meets all Requirements identified in the Statement of Work (SOW).
- Licensor will significantly assist in the efforts of LICENSEE to meet and Exceed PCI requirements.

Fees, Charges, and Scheduling

Our fees will be based on the actual hours worked multiplied by the standard hourly rates for the personnel involved. The standard hourly rates for the assigned LICENSOR personnel are as follows:

Description	Monthly Recurring Charges	Non-Recurring Charges
Managed Security Information Manager	\$1,900	\$1,000
Managed Firewall	\$800	\$500
Managed Log Aggregation (per device)	\$100	



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Description	Monthly Recurring Charges	Non-Recurring Charges
(some Storage GB and EPS limits may apply)		
Managed Intrusion Detection	\$1,500	\$1,000
Managed End User Analytics Monthly with Export Tool	\$4,813	\$2,000
VLAN Port Spanning	\$300	\$350
Optional Services:		
Host Based Application Level Firewall (per server)	\$1,000	
Trend/McAfee Agent (plus 19% maintenance/year)		
Host Based Application Level FW monitoring	\$400	
File Integrity Software (per server)	\$795	
Tripwire Server Edition (plus 19% maint/year)		
File Integrity Monitoring (per server)	\$400	

Upon execution of this contract, the Backup Service pricing as set forth in the table below shall become effective:

Standard Backup (per month)

Streamed Backup Network Connection Fee & Policy Setup (Colocation) per Server

Quantity	1
Streamed Network Backup - Impl.	Streamed Backup Policy Setup - Per Host (Colocation)
Monthly Service	Streamed Backup Network Connection Fee - Per Host (Colocation)

Streamed Network Backup File Agent Install (Colocation) per Server
Backup software installation services for file system agents (per host)

Quantity	1
One-time Service	CV Install for Windows Server (32 Bit) - Per Host (Colocation)

Streamed Network Backup NIC Install (Colocation) per Server
Hardware installation services - Network Interface Card (NIC)

Quantity	1
One-time Service	Network Backup NIC Install - Per Windows Host (Colocation)

Streamed Network Backup Switch Install (Colocation) - 4 or More Servers
Hardware installation services - Gigabit Switch Install

Quantity	1
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One-time Service	Network Backup Switch Install/Config. - Per Switch (Colocation)
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Streamed Backup (per month)

Streamed Network Backup (Colocation) - 100GB

Streamed network backup is defined as the monthly sum of all gigabytes (“GB’s”) transferred from the client’s host server(s) (aggregate of all hosts) to the network backup infrastructure managed by Licensor.

Quantity	1
Streamed Network Backup	100 GB

Streamed Network Backup (Colocation) - 500GB

Streamed network backup is defined as the monthly sum of all gigabytes (“GB’s”) transferred from the client’s host server(s) (aggregate of all hosts) to the network backup infrastructure managed by Licensor.

Quantity	1
Streamed Network Backup	500 GB

Streamed Network Backup (Colocation) - 1TB

Streamed network backup is defined as the monthly sum of all gigabytes (“GB’s”) transferred from the client’s host server(s) (aggregate of all hosts) to the network backup infrastructure managed by Licensor.

Quantity	1
Streamed Network Backup	1,000 GB

Implementation Services

Description	Qty	Price	Ext Price
Streamed Backup Network Connection Fee & Policy Setup (Colocation) per Server	1	\$200	\$200
Total			\$200

Professional Services

Description	Qty	Price	Ext Price
Streamed Network Backup File Agent Install (Colocation) per Server	1	\$300	\$300
Streamed Network Backup NIC Install (Colocation) per Server	1	\$250	\$250
Streamed Network Backup Switch Install (Colocation) - 4 or More Servers	1	\$750	\$750
Total			\$1,300



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Monthly Services – Backup

Description	Qty	Price	Ext Price
Streamed Backup Network Connection Fee & Policy Setup (Colocation) per Server	1	\$105	\$105
Streamed Network Backup (Colocation) - 100GB	1	\$95	\$95
Streamed Network Backup (Colocation) - 500GB	1	\$445	\$445
Streamed Network Backup (Colocation) - 1TB	1	\$840	\$840

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