

**Voter Registration System  
Contract No. EPP-RFP 8248**

THIS AGREEMENT made and entered into as of this 12<sup>th</sup> day of October 2007, by and between VR Systems, Inc., a corporation organized and existing under the laws of the State of Florida, having its principal office at 3375 H-4 Capital Cir NE, Tallahassee, FL 32308, (hereinafter referred to as the "VRS" or "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 NW 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide its Voter Focus☆ Voter Registration and Information Management software package and system ("Voter Registration System" or "System") that shall conform to the Scope of Services (Appendix-A); Miami-Dade County's Request for Proposals EPP-RFP No. 8248 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 July 13, 2007, hereinafter referred to as the "Contractor's Proposal" or "Proposal" which is incorporated herein by reference; and,

WHEREAS, the County desires to procure from the Contractor such Voter Registration System 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 "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services, EPP-RFP No. 8248 and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.
- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative.
- d) The word "Contractor" to mean VRS 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 words "Change Order" or "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- i) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Contract.
- k) The words "Scope of Services" to mean the document appended hereto as Appendix-A, which details the work to be performed by the Contractor.
- l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- m) The 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.
- n) The words "Customized Software" to mean the software created for the County as defined and described in Article 27 below (VRS Licenses and Proprietary Rights) and other parts of this 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) the Contractor's Proposal, and 4) the Miami-Dade County's EPP-RFP No. 8248 and any associated addenda and attachments thereof.

## **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.
- 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) 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.
- b) 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.
- c) 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.

**ARTICLE 5 - CONTRACT TERM**

The Contract shall become effective on the date set forth above and shall be for duration of three (3) years. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for five (5) additional two-year periods, on a biennial basis.

**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**

- a) Project Manager:  
Miami-Dade County  
Elections Department  
2700 NW 87th Avenue  
Miami, Florida 33172

Attention: Bob Vinock, Assistant Deputy Supervisor Electronic Voting  
Phone: (305) 499-8365  
Fax: (305) 499-8577  
Email: mjohnso@miamidade.gov

And to,

- b) Contract Manager:  
Miami-Dade County  
Department of Procurement Management  
111 NW 1<sup>st</sup> Street, Suite 1375  
Miami, FL 33128-1974

Attention: Adil Khan, Senior Procurement Contracting Officer

Phone: (305) 375-1436  
Fax: (305) 375-5688  
E-Mail: [aak@miamidade.gov](mailto:aak@miamidade.gov)

**(2) To the Contractor**

Attention: David S. Watson, VP R&D  
Phone: (850) 668-2838  
Fax: (850) 668-3193  
E-mail: [dwatson@Vrsystems.com](mailto:dwatson@Vrsystems.com)

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

**ARTICLE 7 - PAYMENT FOR SERVICES/AMOUNT OBLIGATED**

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in the total amount of \$999,679 for the initial three-year term as further described in Appendix-B; Pricing Schedule. The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for additional or Optional services as provided in the Proposal dated July 13, 2007 or for a change and/or modification to the Contract which is approved and executed in writing by the County and the Contractor, which such Optional and additional services shall be compensated at the rates provided for in Appendix-B; Pricing Schedule.

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

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

**ARTICLE 8 - PRICING**

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

- a) The Contractor agrees that pricing for any Software and services shall be as stipulated in the Appendix-B; Pricing Schedule.
- b) With respect to prices for maintenance services, the prices shall be those set forth in the Appendix-B; Pricing Schedule.
- c) With respect to Software customization services, the hourly rates shall be

those as specified in the Appendix-B; Pricing Schedule.

#### **ARTICLE 9 - METHOD AND TIMES OF PAYMENT**

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor pursuant to Appendix-B; Pricing 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 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 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 or the Public Health Trust.

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

Miami-Dade County  
Elections Department  
2700 NW 87th Avenue  
Miami, Florida 33172  
Attention: Maria Saboya

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

#### **ARTICLE 10 - 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 reasonable 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 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.

- c) 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.
- d) 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.
- e) 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 11 - 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 employee shall have and wear proper identification.

#### **ARTICLE 12 - 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 13 - 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 initially 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 first 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 County Manager dispute resolution procedures set forth below in this Article. Exhaustion of these dispute resolution procedures shall be a condition precedent to any legal proceedings.
- 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 initially 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 a recommendation to the parties, but subject to any formal mediation to which the parties may agree. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises, and must be decided by the County Manager within 30 days of the occurrence, failing which, either party may seek mediation.
- 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

#### **ARTICLE 14 – ENTIRE AGREEMENT; NO THIRD PARTY BENEFIT INDEMNITY**

- 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) If any part of 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 15 - 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 Appendix-A; 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 the most recent prior three-year period of the Agreement, and further maintain such records and documents for three years after final expiration of the Agreement.

#### **ARTICLE 16 - 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 17 - CONSENT REQUIRED FOR ASSIGNMENT**

Neither party hereto may assign its right or obligations under this Agreement without the prior written consent of the other party except that VRS may assign this Agreement to any entity which acquires all or substantially all of its business by merger, sale of assets, or otherwise. Without the prior written approval of VRS, neither the Agreement or the Licenses herein granted may be sub-licensed, transferred, given, assigned to, or leased or used by any third party including but not limited to County's consultants or other counties or governmental entities. Any such transfer is of special concern as it involves any present or potential competitor of VRS, or anyone who might develop systems similar to the System, or who might use VRS' proprietary information in any manner whatsoever. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties' permitted assigns and successors.

#### **ARTICLE 18 - 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 permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option 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 19 - 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 20 - 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 21 - TERMINATION FOR CONVENIENCE 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 and in such event 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) take no action which will increase the amounts payable by the County under this Agreement; and
- e) In the event that the County exercises its right to terminate this Agreement pursuant to this Article 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 and the Work Order up to the Effective Termination Date; and

- f) All compensation pursuant to this Article is subject to audit.
- g) If County terminates the Agreement pursuant to this Article 21(d), then VRS shall have no further obligation or duty to perform under this Agreement, and County agrees to immediately cease use of the System and Customized Software and return possession of the System, Customized Software, and all related Documentation and accompany materials and documents to VRS. If County for any reason refuses to return said System, Software, and Documentation, then it shall continue to pay VRS the License and other applicable fees hereunder so long as County continues to use same. VRS shall then have the right to seek all legal remedies without reference to Article 13 (pre-suit dispute resolution procedures). In no event shall County be entitled to use beyond two years after termination, absent written agreement with VRS.

#### **ARTICLE 22 - EVENT OF DEFAULT**

- a) An Event of Default shall mean a material 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 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 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 that, after providing the required notice of default and opportunity to cure (Article 23), the County nevertheless reasonably and in good faith declares an Event of Default, then the County may terminate this Agreement for default and immediately take possession of and be entitled to use and maintain the System, Customized Software, and related Documentation, and shall also be entitled to release of the source code from escrow pursuant to the terms of Contractor's Proposal pertaining to escrowed source code.

**ARTICLE 23 - NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION**

If an Event of Default occurs in the reasonable, good faith determination of the County, the County shall so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured within 30 days or this Agreement with the County may be terminated. 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 24 - PATENT AND COPYRIGHT INDEMNIFICATION**

VRS agrees to hold County harmless from any claim, suit, or action relating to a US patent or US copyright infringement arising out of County's use of the software developed by VRS or tools employed in development of its software and shall pay all reasonable legal fees, costs, and expense of County incurred in the defense of any US patent or US copyright claim or suit, provided that: (a) County is not in default under any of the provisions of this Agreement; (b) the software against which the claim is made was manufactured, created and developed by VRS and not third parties; (c) County notifies VRS promptly in writing of any patent or copyright claim; and (d) VRS has an opportunity to fully participate in the defense and/or agrees to a settlement of any such claim. If a patent or copyright claim is made, or in VRS' opinion is likely to be made, VRS may at its sole option, either replace or revise the System or Documentation so that the System or Documentation will be non-infringing on claimant, obtain a right to use the System from the claimant, or refund to County the License Fee paid hereunder. Either of said options shall be the maximum exposure of VRS for any such copyright or patent infringement claim.

**ARTICLE 25 - CONFIDENTIALITY**

All information regarding County's business operations, business systems, and related confidential matters furnished or disclosed to VRS in the course of the negotiation and implementation of this Agreement shall be held in confidence by VRS, unless such information was previously known by VRS free of any obligation to keep it confidential,

or has been, or is subsequently, made public by County or a third party lawfully in possession of such information, or unless such information is in the public domain. VRS agrees and understands that voter registration records are confidential and VRS hereby agrees that these records will not be used for any other purpose than those specified in this Agreement and by the Supervisor of Elections. These records will not be copied nor will any person be allowed to extract any information from these records without the consent of the Supervisor of Elections of County. County agrees to similarly treat any information provided to it by VRS and to instruct its employees who will work with the System or Customized Software about the restrictive covenants and conditions of this Agreement and about the safeguarding, security, and copying requirements hereinafter discussed. Notwithstanding any portion of this Agreement to the contrary, the provisions of State law, constitutional or statutory, pertaining to public records and open government ("government in the sunshine"), and any cases construing such law, shall prevail over the provisions of this Agreement.

#### **ARTICLE 26 - COUNTY 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 acknowledge 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 Contractor and its 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 27 – VRS LICENSES AND PROPRIETARY RIGHTS**

The County recognizes and agrees that VRS is licensing two different types of software systems pursuant to this Agreement: (1) VRS' already developed Voter Focus Voter Registration software and system (the Voter Registration System or "System") in use by 60 other Florida Counties, and (2) certain software to be custom developed for the County (the "Customized Software") pursuant to the terms of this Agreement. Different

licenses and terms apply to each of these two types of software systems as follows,

a) *System License.* As to the Voter Registration System VRS, hereby grants to County, and County hereby accepts from VRS, subject to all the terms, covenants, conditions, and limitations set forth in this Agreement, a non-exclusive, nontransferable, indivisible, revocable right and license (the "License") to use the computer-based Voter Focus☆ Voter Registration and Information Management software package developed and owned by VRS, including all releases, enhancements, customizations, and other changes thereto (the "System"). This License shall be in effect for the Initial Term (Article 5) of this Agreement and any renewals thereof, but only so long as: (a) County is not in breach of, or in default under, this Agreement; and (b) County is covered under VRS' Maintenance and Support Program.

b) *Customized Software License.* Because a substantial part of the Customized Software code will of necessity be shared with and link to VRS' System Software or use routines that access and are copied from VRS's proprietary Voter Focus Systems Software, the County acknowledges and agrees that proprietary rights to the Customized Software shall remain with VRS. Nevertheless, as to the Customized Software, VRS, hereby grants to County, and County hereby accepts from VRS, subject to all the terms, covenants, conditions, and limitations set forth in this Agreement, an exclusive, nontransferable, indivisible, revocable right and license (the "Customized Software License") to use the Customized Software and related documentation, including all releases, enhancements, customizations, and other changes thereto, (the Customized Software System"). As to the Customized Software, VRS shall provide both source and object code to County for its use subject to the terms of this Agreement and the License granted herein, and County shall have unrestricted rights to maintain and use the program internally as it wishes, including the production of derivative works. However, all proprietary rights remain with VRS. This License shall be in effect so long as this Agreement is in effect, including any renewals thereof, but only so long as: (a) County is not in breach of, or in default under, this Agreement; and (b) County is covered under VRS' Maintenance and Support Program.

c) *Title to System and Customized Software; Protective Covenants.* County acknowledges that the System and Documentation (including changes, enhancements, alterations, and additions provided under Maintenance and Support) are the sole and exclusive property of VRS; that the System and Documentation, and all parts and components thereof, constitute valuable assets, trade secrets, and give proprietary rights to VRS; that neither legal nor equitable title to the System or Documentation passes to County under the terms of this Agreement or under any other agreement or theory; and that any information with respect to the System and the Documentation, is strictly confidential and to be strictly protected by County per Article 25 (Confidentiality), whether or not all or any portion of the System or Documentation have been copyrighted or patented. No part or portion of the System (except where permitted under Article 27.b) or Documentation may be altered, modified or enhanced by Customer, or its agents or employees. All programs, documentation, and materials in machine-readable form supplied under the License shall be kept in a secure place, under access and use restrictions not less strict than those applied to County's most valuable and sensitive programs and data.

#### **ARTICLE 28 – REMEDIES IF COUNTY BREACHES VRS' USE RESTRICTIONS**

County agrees that for any breach of the restrictions upon the use, sale, transfer, or disclosure of the System or Customized Software as provided for in this Agreement (including Articles 17, 25, and 27) monetary damages shall not be a sufficient remedy or protection for VRS, and VRS shall be entitled to seek injunctive or other equitable relief that it may deem proper or necessary in a court of competent jurisdiction without any requirement to post bond or surety thereon as a condition of such relief, in addition to being entitled to seek any other legal or equitable relief.

## **ARTICLE 29 - BUSINESS APPLICATION AND FORMS**

**Business Application** The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor application and to update the application file for any changes for the duration of this Agreement, including any option years.

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 30 - INSPECTOR GENERAL REVIEWS**

### Independent Private Sector Inspector General Reviews

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

### **Miami-Dade County Inspector General Review**

According to Section 2-1076 of the Code of Miami-Dade County, 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 contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County 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 contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General 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 contract specifications and to detect fraud and corruption.

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

proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

### **ARTICLE 31 - 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 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 because of race, religion, color, age, sex, national origin, sexual preference, disability or marital 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 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.

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 32 - NONDISCRIMINATION**

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex,

handicap, marital status, age or national origin, and will take affirmative action to ensure that they 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 with the County, 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 33 - 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 grant 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 34 - USE OF COUNTY 'S NAME**

County agrees that VRS may include County 's name in any complete or partial listing of VRS Customers, for VRS' own marketing efforts, at VRS' sole discretion. Notwithstanding the above, the County does not grant VRS to use County's logo or trademarks in any way, shape, or form.

#### **ARTICLE 35 - 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 36 - 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.

#### **ARTICLE 37 - COUNTY USER ACCESS PROGRAM (UAP)**

##### **A. User Access Fee**

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

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

**B. Joint Purchase**

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

**C. Contractor Compliance**

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 22 of this Contract.

**ARTICLE 38 - PROJECTS AND SERVICES**

The parties anticipate that from time to time they will be in contact regarding the County's needs for assistance on clearly defined Projects ("Projects") in the areas of business strategy, business integration, business process improvement, training, management development, project management, computer programming, systems integration, data processing, software development and other specific activities related to improving the County's computer systems, training or personnel to operate the same, creation or modification of software, and related consulting activities ("Services").

**ARTICLE 39 - STATEMENT OF WORK**

Prior to the commencement of Services for any Project, the County and the Contractor shall mutually agree upon the terms and conditions required to complete a Statement of Work ("SOW") for the specific Project that shall define in detail the Services to be performed. 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.

**ARTICLE 40 - 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; Appendix-A and the Project Plan defined in the Proposal dated July 13 2007, and as specified herein. The Contractor understands that the County shall have final approval on all Deliverables.

Each phase of the project plan will be subject to formal approval by the County. Except as agreed between the Contractor and County, the next phase cannot commence until the prior phase's activity is approved,

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.

Design documents provided for approval shall be deemed approved if a written detailed list of defects has not been provided to the contractor within 20 working days of the provision of the documents for approval.

Furthermore:

- a) For each Deliverable made hereunder, the County shall have thirty (30) business days (20 business days for design documents), 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 pursuant to Article 56 "Extension of Time", within ten 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:

- 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,
  - 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.
- e) The County recognizes that Voter Focus is a licensed software product implemented very widely in Florida. The County will not use disapproval as a means to force alteration to the basic Voter Focus product.

#### **ARTICLE 41 - DELIVERY AND INSTALLATION**

- a) All Software and/or Deliverables the County ordered shall be delivered F.O.B. Destination. The County shall accept or reject the Software and/or Deliverables within ten (10) days of receipt unless otherwise provided elsewhere in this Agreement.
- b) If the Contractor fails to make delivery within the time specified in the applicable Work Order, or if the Software and/or Deliverable delivered fails to

conform to the requirements hereof in quality, number or otherwise or are found to be defective in material or workmanship, then the County may reject the delivered Software and/or Deliverable or may accept any item of Software and/or Deliverable and reject the balance of the delivered Software and/or Deliverable. The County shall notify Contractor of such rejection in writing and specify in such notice, the reasons for such rejection. Contractor agrees to deliver replacement Software and/or Deliverables for such items of rejected Deliverables and/or Software within fifteen (15) Days of Contractor's receipt of the County's rejection notice.

- c) The County may delay delivery of ordered Software, and/or Deliverables or any portion thereof, for up to sixty (60) days at no additional cost to the County, by giving written notice to the Contractor of its desire to delay delivery at least ten (10) days prior to the Scheduled Delivery Date set forth in the Order. In the event of such delay, the County will provide the Contractor with a new delivery date for such Software and/or Deliverables or portion thereof as soon as reasonably possible, but in no event later than ten (10) Days following the County's receipt of notice of the Contractor's desire to delay delivery.
- d) The Contractor shall deliver all ordered Software and/or Deliverables In accordance with the schedule in the Proposal starting at p. 113.
- e) The Contractor shall bear the risk of loss or damage to delivered Software and/or Deliverables until the time the Project Manager certifies that the System(s) has successfully completed the System Acceptance test at the applicable site, 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.
- f) Contractor agrees to install the Software at the applicable Sites set forth in the Contract. Contractor agrees to commence installation of the Software as soon after delivery as is possible, but in no event later than five (5) Days after delivery, or unless a different time for installation is otherwise mutually agreed upon by the parties hereto. All installation work will be performed during normal business hours. Contractor shall diligently pursue and complete such installation without interruption and in accordance with the Implementation Schedule, so that such Software is in good working order and ready for use by the Installation Date set forth in the Implementation Schedule.
  - 1. Contractor agrees to do all things necessary for proper installation and to perform its installation 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 at the Site(s) to complete Software installation. The County shall be responsible for resolving all disputes relating to Site access between Contractor and other contractors. Contractor shall provide all materials necessary to proper installation of the Software. The County shall attempt to provide reasonable working and secure storage space for the performance by Contractor of the installation services described herein. Contractor agrees that all installation work will be performed neatly and at all times Contractor shall keep Site(s) free from waste materials and rubbish resulting from the services being performed by Contractor.

- g) Software testing shall done with mutual agreement between the two parties.

#### **ARTICLE 42 – SOFTWARE LICENSES, SUBLICENSES, DOCUMENTAION**

The Contractor shall provide the County with documentation, satisfactory to the County, confirming that the Contractor has acquired on the County's behalf all software licenses required hereunder.

- a. In the event the County purchases a license for Licensed Software, the Contractor shall provide to the County the computer programs (the "Programs"), other materials related thereto (the "Documentation") with the Programs.
- b. The Contractor shall, at its own expense, secure and administer for the County, in the County's name, any and all necessary sublicenses or direct licenses for the third party software, which shall be perpetual and irrevocable. The Contractor shall secure such sublicenses and direct licenses upon the same terms and conditions as the license between the Contractor and the County contained herein and additional terms and conditions, which in the County's sole discretion, are acceptable to the County. The terms and conditions of such sublicense agreements, at a minimum, shall include, but not be limited to the right of the County: (i) to make multiple copies of the third party software; (ii) to use the third party software on multiple processors utilized by the County or entities affiliated with the County, at no additional licensing fee.

#### **ARTICLE 43 - SCOPE OF LICENSE**

The County may use the Licensed Software on any and all equipment configurations of whatever make, manufacture and/or model, owned, controlled or contracted for, by 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 or which may assume the responsibilities of the County or any successors of

the County, provided that hardware used shall comply with the requirements indicated in pages 99 through 105 of the Proposal Dated July 13th, or updated requirements that Contractor shall issue from time to time to keep the requirements reasonably up to date with current industry standards. Irrespective of the number of equipment configuration(s) controlled by the County on which the Licensed Software is used, the County shall pay only one license fee set forth herein, provided however that the County orders such Licensed Software.

#### **ARTICLE 44 - SOFTWARE RELATED DOCUMENTATION**

The Licensed Software-related Documentation ("Documentation") will consist of all operator and user manuals, training materials, and help systems. The Documentation will in all cases be fully applicable to the use of the Programs with the Equipment, and will identify and reflect any particular features of the Equipment which may affect the normal use and operation of the Programs. The Contractor shall deliver to the County a printed and a digital version 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. Documentation relating to customized development shall consist of the source of the customized program, operational guide, end-user materials, requirements document from which the software is constructed, and any design documents in magnetic form that the Contractor, in its sole discretion, shall deem necessary for the construction of the required customized programs.

#### **ARTICLE 45 - OPERATING ENVIRONMENT FOR INFORMATION SYSTEMS**

The Programs, and each module or component and function thereof, will be capable of operating fully and correctly in the operating environment identified in the Scope of Services; Appendix-A. The Contractor hereby warrants and represents that each Program will be fully compatible and will interface completely with each other Program provided hereunder with the Software, and with the County's Equipment, such that the Equipment, Software, Licensed Software and Deliverables combined will perform and continuously attain the standards identified in the applicable section of this Agreement, including but not limited to the performance standards set forth in the Scope Of Services (Appendix-A) and Contractor's Proposal.

#### **ARTICLE 46 - SOFTWARE REVISIONS**

In the event of Default by Contractor not timely cured, the County will have the right, in its own discretion, to independently modify any Customized Software through the services of its employees, agents, contractors or subcontractors and, for such purposes, may disclose the Customized Software, or any portion thereof, to such employees, agents, contractors or subcontractors, subject to VRS' proprietary rights and the restrictions upon the sale, transfer, or disclosure of the System or Customized Software as provided for in this Agreement (including Articles 17, 25, and 27). As between the County and the Contractor, such modifications shall become the property of the County.

**ARTICLE 47 - SOFTWARE ENHANCEMENTS/MODIFICATION**

The Contractor understands the County may request changes to the Licensed Software, which is outside the specification of the existing Licensed Software. Legally required, or reasonably requested enhancements are included in the annual maintenance fee. When such requests are made, the Contractor shall give such requests its best good faith and reasonable consideration, and shall weigh and evaluate such requests based on such matters as how widespread the need is, the feasibility of the change, and such matters as what effect or impact the change will have on other users, other counties, county operations, the Florida Supervision of Elections, and requirements of applicable law or regulations. In the case of interfacing to systems and equipment that are being marketed to elections offices, Contractor will develop a licensed interface product that may be optionally acquired for a fee. Contractor will deliver source code to the County only for Custom programming. If a decision is made to proceed as to any such requests, Contractor shall prepare a scope of work and submit a cost proposal including all costs pertaining to furnishing the County with the enhancements/modifications.

Thereafter the County and the Contractor shall agree to a not-to-exceed number of hours for the requested modification/enhancement. In no event shall the Contractor perform any Services on the task unless the County issues a written notice to the Contractor to proceed with the task. The Contractor shall not be reimbursed for the preparation of proposals.

As to Customized Software only, when the source code is completed, tested and accepted by the County, the Contractor shall deliver said source code to the County. The County may revise and modify this source code. The Contractor shall, upon the County's request, install the enhancement/modification and shall provide the County with such services as reasonably required, at no additional cost, to enable the County to continue the County's intended use of the Licensed Software. Following the County's enhancements/modification acceptance of all enhancements/modification, such enhancements/modification shall thereafter be considered a part of the Licensed Software for all purposes under this Agreement. The Contractor shall provide the County, if so requested with written confirmation of the date the enhancements/modification was applied to the Licensed Software, and any and all Documentation relating to the Licensed Software and or enhancements/modification thereto.

If any such enhancements/modification is not acceptable to the County, the County may refuse to accept same, and, in such event, the Contractor agrees to maintain the Licensed Software in the form in effect on the date the Contractor requested the County to accept such update.

**ARTICLE 48 - OWNERSHIP OF LICENSED SOFTWARE**

The Contractor hereby warrants and represents that the Contractor possesses all rights to and interests in the Licensed Software, and all portions thereof, or otherwise have the

right to grant to the County the licenses provided in this Agreement without violating any rights of any third party, and there are currently no actual or threatened suits by any such third parties based on an alleged violation of such rights by the Contractor. The Contractor shall require that all suppliers of third party software hereunder furnish to the County the foregoing warranties of ownership with respect to the third party software.

#### **ARTICLE 49 - WARRANTIES AS TO THE CUSTOMIZED SOFTWARE**

The Contractor warrants that (i) all Customized Software provided by the Contractor will be of a high level language that is commercially available and for which software tools are available; (ii) the Customized Software shall be capable of being copied by the County; (iii) the Customized Software shall not contain viruses or pre-programmed devices which will cause any software utilized by the County to be erased or become inoperable of processing accurately and in accordance with the warranties specified herein and the Scope Of Services; and (iv) the Licensed and Custom Software and each module and function thereof shall be capable of operating fully and correctly on the combination of the Equipment and Software furnished by the County, which shall meet the minimum requirements of the recommended hardware specifications as described in the RFP response section 7 c) i).

#### **ARTICLE 50 - SOFTWARE WARRANTY AND WARRANTY PERIOD**

Warranty. During the Initial Term, VRS warrants that the System and the Customized Software will perform reasonably in the manner as described in the Scope of Services (Appendix-A) and Vendor's Proposal, provided County has not made any changes to the System or Customized Software. (NO WARRANTY IS MADE, HOWEVER, WHETHER EXPRESS OR IMPLIED, FOR ANY PART OF THE SYSTEM AND CUSTOMIZED SOFTWARE COPIED OR DUPLICATED BY COUNTY). VRS is entitled to written notice of any failure of the System or Customized Software and granted the exclusive right to undertake and complete changes, corrections or repairs necessary under the warranty within an agreed upon time. The County shall maintain and have in existence a full and accurate monthly backup copy of all databases related to the System Software and Customized Software, so as to allow appropriate investigation, identification, and remediation of any software failures including any required changes, corrections, or repairs. These backups shall be retained for not less than 5 years, from the date of the backup. Absent such backups, any Warranty or required remediation hereunder shall be void to the extent the absence of such backups prevents identification of and timely changes, corrections, or repairs or other remediation. The County shall use the testing facilities provided by the System and Customized Software to conduct trials, fully exercising all the essential functions of the System and Customized Software. Such System and Customized Software testing shall be done sufficiently in advance of, and at least ninety (90) days before, each Election cycle as to allow time for the resolution of any defects of the System and Customized Software and a re-test to verify proper performance of the System and Customized Software. Any defects discovered during System and Customized Software testing or during normal operation of the System and Customized Software shall be promptly communicated to VRS by Fax or email.

Whatever additional materials that VRS shall request relating to the defects or problems shall be promptly provided by County on the appropriate medium. Upon such notification, VRS will, within a reasonable period of time, rewrite, repair or replace, at its cost, any part of the System and Customized Software which is not functioning according to this warranty, and will bear all labor, travel and lodging expenses for its personnel used in connection with warranty work. If VRS is unable to repair or replace the System and Customized Software, it will, after the return of the System and Customized Software and Documentation intact and in proper condition, refund County the Annual Use/Maintenance/Support Fee, as detailed in Appendix B of this agreement on a pro-rata basis and this Agreement will automatically terminate without additional liability to County. The pro-rata refund will be based on the number of months remaining in the then-current Maintenance and Support services year. If it is determined and mutually agreed by both parties that the defects are attributable to changes made to the System and Customized Software by County or others in County 's employ or at County 's direction, County will pay VRS within thirty (30) days of VRS' invoice for: (a) the time spent by VRS personnel in evaluating the stated defects, at VRS' then current rates for such services; and (b) the travel expenses of its personnel in connection with such evaluation of nonwarranty work at rates statutorily allowed under Florida law for State employees. The foregoing warranty does not replace or eliminate in any way County 's obligations under VRS' Maintenance and Support program.

#### **ARTICLE 51 – EXCLUSION OF ALL WARRANTIES AS TO VRS SYSTEM**

THE SOLE LIABILITY OF VRS TO THE COUNTY FOR PERFORMANCE OF THE VOTER REGISTRATION SYSTEM AND THE CUSTOMIZED SOFTWARE IS LIMITED TO THE ABOVE WARRANTY OF REPAIR, REPLACEMENT, OR PRO-RATA REFUND. THIS WARRANTY IS THE SOLE AND EXCLUSIVE REMEDY OF COUNTY AND IS IN SUBSTITUTION OF ALL OTHER WARRANTIES, EXPRESS, OR IMPLIED, AND IS IN LIEU OF ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR ANY OTHER WRITTEN, ORAL, OR IMPLIED WARRANTIES (EXCEPT AS TO TITLE) ARISING OUT OF ANY COURSE OF DEALING, CUSTOM, OR USAGE OF TRADE.

#### **ARTICLE 52 - LIMITATION OF ACTIONS/ LIABILITY**

In no event shall VRS be liable for any damages or remedies that might otherwise arise out of this Agreement or the use of the System, including, but not limited to: (a) general, special, indirect, incidental, foreseeable, normal, or consequential damages; (b) lost profits, loss of savings, loss of data or information, business interruption, finance charges, increased costs of doing business, reliance on any promise or premise; and (c) damages arising under any warranty, negligence, or breach of contract claims of customer against VRS. In any event, VRS' liability for damages under any theory or form of action shall not exceed the total amount paid by Customer under this Agreement to VRS as itemized in Appendix-B; Pricing Schedule (exclusive of out-of-pocket reimbursements and any Annual Use/Maintenance/Support Fee).

#### **ARTICLE 53 - 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 subcontractor's and suppliers' warranties and representations with respect to the Licensed Software 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 50 "Software Warranty and Warranty Period".

#### **ARTICLE 54 - INDEMNIFICATION AND INSURANCE**

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 incurs 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 and the fault or negligence of Contractor or its employees, agents, servants, partners principals or subcontractors. Provided however, it is expressly understood and agreed that Contractor's total liability for indemnity hereunder shall be limited to \$2,000,000 and such liability will be insured by the below listed insurance policies required by this Agreement

The Contractor shall furnish to the Vendor Assistance Section, 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.
- D. Professional Liability Insurance in an amount not less than **\$2,000,000**.

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.

**NOTE: DADE COUNTY BID # AND TITLE OF PROPOSAL MUST APPEAR ON EACH CERTIFICATE. CERTIFICATE HOLDER MUST READ:**

**MIAMI-DADE COUNTY  
111 NW 1<sup>ST</sup> STREET  
SUITE 2340  
MIAMI, FL 33128**

**NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.**

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 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 55 - TESTS**

All Custom Software provided to the County shall be thoroughly tested and free of errors prior to the shipment. Where custom software is an interface between Voter Focus and another system, the County will provide facilities to allow Contractor to conduct development and quality assurance in Contractor's offices. The County will conduct extensive testing on the Custom Software. The software will be accepted by the County if it meets the criteria detailed in the Scope of Services.

**ARTICLE 56 - 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 57 "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 57 - EXTENSION OF TIME NOT CUMULATIVE**

In the event the Contractor shall be delayed concurrently by two or more of the causes

identified in Article 56 "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 58 - 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 56, 57, and 58 "Extension of Time", Extension of "Time Not Cumulative", and "No Damages for Delay".

#### **ARTICLE 59 - CHANGES AND EXTRA WORK**

- a. The County reserves the right to order changes which may result in additions to, reductions to or deletions from the amount, type or value of the Work required by this Agreement. It is understood by the County that the County may not order changes to the Licensed Product, Voter Focus, and that the County may not order enhancements and support obligations which are to the detriment of other users, including the Florida Supervisors of Elections. Any such work shall be known as "Extra Work". It is understood and agreed by the Contractor that the amount to be paid or deducted from payment by the County for Extra Work shall be computed on the basis of the applicable rates set forth in the Pricing Schedule for equivalent items as determined by the Project Manager. Extra Work so ordered must be performed by the Contractor.
- b. No Extra Work shall be performed except pursuant to written orders of the Project Manager expressly and unmistakably indicating his intention to treat the work described therein as Extra Work. In the absence of such an order, if the Project Manager shall direct, order or require any work which the Contractor deems to be Extra Work, the Contractor shall nevertheless comply therewith and shall promptly, and in no event after beginning the performance thereof or incurring cost attributable thereto, give written notice to the Project Manager stating why he/she deems such work (hereinafter "Disputed Work") to be Extra Work. Said notice is for the purposes of (1) affording an opportunity to Project Manager to cancel promptly such order, direction or requirement; (2) affording an opportunity to the Project Manager to keep an accurate record of the materials, labor and other items involved; and (3) affording an opportunity to the County to take such action as it may deem advisable in light of such disputed work.

- c. No change in or modification, termination or discharge of this Agreement in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith or his duly authorized representative; provided, however, that any change in or modification, termination or discharge of this Agreement, expressly provided for in this Agreement shall be effective as so provided. The County may only be bound hereunder by a properly authorized officer of the County.
- d. In the event that the County shall order Extra Work for which there are no applicable rates set forth in the Pricing Schedule; Appendix-B for equivalent items as determined by the Project Manager, it is understood and agreed by the Contractor that the County and the Contractor shall negotiate a mutually agreeable price to be paid by the County for the Contractor's performance of such Extra Work.

#### **ARTICLE 60 - MAINTENANCE SERVICES**

a) **Coverage.** During the Initial Term of this Agreement, subject to renewal or termination as otherwise provided, VRS agrees to: (i) Provide unlimited telephone support in the effective use of the System on weekdays during the hours of 9:00 a.m. to 5:00 p.m. (Eastern Standard Time). (ii) Provide County with the latest and most up to date version of County's System and Documentation, including any and all enhancements and improvements to them (but not including new products developed by VRS for use in conjunction with the System and sold separately). (iii) Correct or replace the System and/or provide services necessary to remedy any programming error that is both attributable to VRS and that significantly affects the performance of the System. Such correction, replacement, or services will be promptly accomplished after County has identified and notified VRS of any such error in writing via facsimile or email. At its expense, County agrees to provide VRS with information, including, but not limited to, sufficient access via Virtual Private Network VPN or modem to County's system, file dumps, screen dumps, error reports, as requested by VRS, and with sufficient support and test time on County 's computer system to duplicate the problem encountered in order to ascertain that the problem is with the System and to correct the problem. Corrections for difficulties or defects traceable to County errors or unauthorized System changes, however, will be billed at VRS' standard time and material rates. (b) **Annual Fee and Annual Renewal.** The Fee for the first year of Maintenance and Support is included in the original License Fee. County understands and agrees that each annual Use/Maintenance/Support fee is a use fee for the right to the next year's annual License and the right to the next year's annual Maintenance and Support, and that these shall be deemed provided and complete, and payment therefore due, upon receipt of invoice as provided in Article 9 (Method and Timing of Payment). (c) **Enhancements and Corrections.** Any enhancements, corrections or alterations to, or new versions of, the System or Documentation delivered to County by VRS under this Agreement, shall be limited to one (1) copy of such enhanced, corrected, altered or new System or Documentation. Program changes, including training in the use and implementation of

such program changes, in order to meet any new statutory requirements will be provided under the Maintenance and Support portion of this Agreement. (d) **Travel Expenses.** County shall reimburse VRS for any travel expenses incurred by VRS at rates statutorily allowed within Florida law for State employees in performing its Maintenance and Support obligations.

**ARTICLE 61 - 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 62 – TAXES AND DUTIES**

County is currently a tax-exempt entity and is not liable for any sales, service, use, excise, lease, or similar taxes. However, should this status change, County agrees that it and not VRS will be liable for and promptly pay any such taxes or duties that may become due as a consequence of this Agreement.

**ARTICLE 63. FORCE MAJEURE**

Neither party shall be responsible to the other for nonperformance due to acts of God, fire, flood, hurricane, epidemic, acts of government, wars, riots, civil unrest, strikes, accidents in transportation, or other causes beyond the control of the parties.

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## Appendix-B

### Pricing Schedule

#### TOTAL PRICE FOR THE VOTER REGISTRATION SYSTEM AND RELATED SERVICES FOR INITIAL THREE (3) YEAR TERM:

**\$999,679**

Payment terms are as follows, the Phases refer to the phases of the implementation defined in VRS Proposal dated 13<sup>th</sup> July 2007 starting on page 113.

Timing of Payment	Description of Payment	Amount
Contract Binder, due on contract signature	10% of License Fee	\$61,052
End Phase 2	40% Data Conversion Fee	\$20,000
End Phase 3	50% Installation Fee	\$12,236
	20% Data Conversion Fee	\$10,000
End Phase 4	25% Training Fee	\$25,000
	25% License Fee	\$152,630
End Phase 5	50% Training Fee	\$50,000
	25% License Fee	\$152,630
End Phase 6	40% License Fee	\$244,208
End Phase 7	40% Data Conversion Fee	\$20,000
	Balance of Training Fee	\$24,655
	Balance Installation Fee	\$12,236

The renewal schedule is based on the assumption of contract dated October 10<sup>th</sup> 2007, and a first use of the Voter Focus Registration System of May 11<sup>th</sup> 2008. Some adjustments may be necessary based on actual contract execution date.

Date Due	Description	Amount
5/11/2009	Renewal 5/11/2009 – 9/10/2009	\$50,572
9/10/2009	Renewal year starting 9/11/2009	\$164,755
9/10/2010	Renewal year starting 9/11/2010	\$177,935

9/10/2011	Renewal year starting 9/11/2011	\$192,170
9/10/2012	Renewal year starting 9/11/2012	\$ 207,543
9/10/2013	Renewal year starting 9/11/2013	\$224,147
9/10/2014	Renewal year starting 9/11/2014	\$242,079
9/10/2015	Renewal year starting 9/11/2015	\$261,445
9/10/2016	Renewal year starting 9/11/2016	\$282,360
9/10/2017	Renewal year starting 9/11/2017	\$304,949

Where required hourly rates for labor shall be as follows:

Description	Price
Project Manager (Hourly Rate)	\$250
Consultant (Hourly Rate)	\$200
Trainer (Hourly Rate)	\$150
On-site Training (Hourly Rate)	\$280
Senior Software Programmer (Hourly Rate)	\$180
Senior Web Programmer (Hourly Rate)	N/A
Database Analyst (Hourly Rate)	\$250

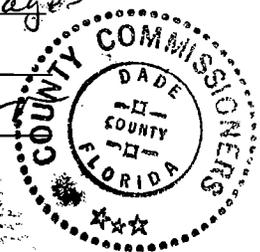
IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Contractor

Miami-Dade County

By: Jane M. Watson  
Name: JANE M. WATSON  
Title: PRESIDENT  
Date: 10/12/2007  
Attest: Virginia M. Cox  
Corporate Secretary/Notary Public

By: Alina T. Hudak  
Name: Alina T. Hudak  
Title: Assistant County Manager  
Date: 11/8/07  
Attest: [Signature]  
Clerk of the Board



Corporate Seal/Notary Seal

Approved as to form and legal sufficiency

[Signature]  
Assistant County Attorney

