



FORM OF AGREEMENT

CONTRACT NO. 746

THIS AGREEMENT made and entered into as of this day of Mar. 7, 2012 by and between, Trapeze Software Group, Inc. a corporation organized and existing under the laws of the State of Arizona, having its principal office at 8360 East Via de Ventura, Scottsdale, Arizona 85258 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide a Transit Operations System Replacement Project (TOSRP) Solution, that shall conform to the Contract Documents and,

WHEREAS, the Contractor has submitted a written proposal dated March 30, 2012, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein; and,

WHEREAS, the Contractor shall deliver all Transit Operations System Replacement Project (TOSRP) Solution hardware, software, and related services; to be delivered per the delivery schedule in the Form of Agreement documents herein, after the Notice to Proceed (NTP). All bonding shall be delivered to the County as required by the Contract. The Contractor shall provide Bonds for performance, and payment guarantees for the Transit Operations System Replacement Project (TOSRP) Solution; and,

WHEREAS, the County and the Contractor have mutually agreed to these documents, hereinafter referred to as the "Contract Documents", which are incorporated herein. Payments will be made as provided by the contract Payment Schedule; and,

WHEREAS, the County desires to procure from the Contractor such Work for the County, in accordance with the Contract Documents; and,

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

County hereby agrees to pay to the Contractor for said Work, and warranty, the total fixed price sum of \$ FOUR MILLION EIGHTY-EIGHT THOUSAND FIVE HUNDRED THIRTY DOLLARS



(USD) (\$ 4,088,530.00 (USD))which includes the costs associated with Bonds, Software Licenses, Training, Professional Services, System Warranty and Software Escrow Services. Additionally, at the sole discretion of the County, software and maintenance agreements may be obtained for a cost of FOUR MILLION SEVEN HUNDRED TWENTY-FIVE THOUSAND TWO HUNDRED SEVENTY-FOUR DOLLARS (USD), (\$ 4,725,274.00 (USD)), over a nine-year period, pursuant to Schedule C - "Software Maintenance Pricing".

ARTICLE 1. DEFINITIONS

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

- a. Whenever in the Specifications the words "acceptable", "accepted", "approval", "approved", "authorized", "condemned", "considered-necessary", "deemed necessary", "designated", "determined", "directed", "disapproved", "established", "given", "indicated", "insufficient", "ordered", "permitted", "rejected", "required", "reserved", "satisfactory", "unacceptable", "unsatisfactory", or words of like import are used, it shall be understood as if such words were followed by the words in writing, "by THE COUNTY" or "to the Department", unless otherwise specifically stated.
 - b. Wherever the word "indicated" is used, it shall be understood to mean " as described in the Specifications", "as shown on the contract Plans", or "as required by the other Contract Documents."
 - c. Wherever the words "provided", "supplied", or "installed" are used in the Specifications in reference to work to be performed by the Contractor, it shall be understood to mean "furnished and delivered completed".
1. The word "ACCEPTANCE" to mean reviewed for conformity to Specification and accepted, in writing, by Miami-Dade County (MDC) through issuance of an Acceptance Certificate. Acceptance of individual components within each subsystem of the TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP) will take place either after completion of installation acceptance testing or upon first use of the respective component in service by MDC. Upon achievement of Acceptance, the Acceptance Certificate shall be deemed to be issued.
 2. The words "ACCEPTED EQUAL" to mean the proposed alternative shall be functionally compatible with, and of equal or better quality than the item it is proposed to replace. MDC's decision as to whether any material or equipment proposed is equal to that specified shall be binding on both MDC and Contractor.
 3. The word "ADVERTISEMENT" to mean the invitation to offer a proposal for work to be performed or materials to be furnished.
 4. The word "ALTERATION" to mean a change or substitution in the form, character, or detail of the work done or to be done within the original scope of the Contract.



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5. The words "AMERICANS WITH DISABILITIES ACT (ADA)" to mean the most current version of the federal law mandating facility and equipment accessibility requirements for persons with disabilities.
6. The word "APPROVAL" to mean MDC's written acknowledgement of acceptance.
7. The word "ASSIGNEE" to mean the third party to which rights and/or obligations of a contract is transferred from a contracting party ("Assignor").
8. The word "ASSIGNMENT" to mean the transfer to a third party ("Assignee") by a contracting party ("Assignor") of its obligations and or rights under a contract.
9. The word "ASSIGNOR" to mean a party under contract which assigns rights and/or obligations of that contract to a third party ("Assignee").
10. The words "AUTHORIZED PROVIDER" to mean a firm or individual certified by the Contractor to provide services relating to the Contractor's products.
11. The words "AUTHORIZED SIGNEE" to mean the person who is executing the Contract on behalf of the Contractor and who is authorized to bind the Contractor.
12. The words "BASE LINE DESIGN" to mean the design of each component, apparatus, systems, subsystems, or materials which have received drawing acceptance and/or First Article acceptance by MDC.
13. The words "BASIC or MANUFACTURER'S STANDARD" to mean the component or part standard to be acceptable as part of the TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP) of the Contractor.
14. The words "CERTIFICATE OF ACCEPTANCE" to mean a certificate issued by the County, for an installed location, when the Contractor has completed installation and testing, of all TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP) equipment, connectivity; including software and hardware, electrical and network wiring, for a location, and the TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP) functions as specified by the Contract Documents.
15. The words "CERTIFICATE OF ACCEPTANCE OF FINAL INSPECTION" to mean a certificate issued by the County when the TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP) has been completed; including completion of installation of all equipment, materials, all required inspections, tests, work, and rework as required by the Contract documents.
16. 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.
17. The words "COMPONENT IN SERVICE" to mean installed equipment that is operational and meets the criteria for the issuance of a Certificate of Acceptance although such certificate has not yet been issued.



18. The words "CONDITIONAL ACCEPTANCE" to mean acceptance of the TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP) for service prior to final acceptance. The System remains conditionally accepted until it is totally responsive to the Specification requirements and corrective action(s) implemented to MDC's satisfaction.
19. The words "CONTRACT" or "CONTRACT DOCUMENTS" or "AGREEMENT" to mean collectively these terms and conditions setting forth the obligations of the Parties there under, and all authorized changes issued subsequent to the execution of the Contract, the performance of the procurement as indicated, and any Exhibits outlined in Article 2.2, and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.
20. The words "CONTRACT BONDS" to mean the Surety Performance, Warranty, and Payment Bonds executed by the Contractor, and his Surety or sureties, guaranteeing performance of the Procurement in accordance with the Contract and all subsequent agreements.
21. The words "CONTRACT SUM" to mean all monies paid to the Contractor by Miami-Dade County for the work to be completed pursuant to the Contract Documents.
22. The words "CONTRACT TERM" to mean the time period allowed for completion of the Contract.
23. The words "CONTRACTING OFFICER" to mean the individual designated by the Internal Services Department (ISD) - Procurement Management Services (PMS) Director, or designee, to perform Contract Management activities for the Contract.
24. The word "CONTRACTOR" to mean the Prime Contractor, and its permitted successors and assigns, solely responsible for the quality and proper functioning of the TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP) and all components; the person or persons, Proposer, partnership, corporation, or combination thereof which has entered into this Contract with MDC to supply the (TOSRP).
25. The words "CONTRACTOR'S DRAWINGS" to mean items such as general drawings, detail drawings, graphs, diagrams, sketches, calculations, and catalog cuts which are prepared by the Contractor to detail its work.
26. The words "CONTRACTOR REPRESENTATIVE/PROJECT MANAGER" to mean the person designated by the Contractor with responsibility for the TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP), who must be empowered to act on behalf of the Contractor.
27. The word(s) "COUNTY" or "THE COUNTY" to mean Miami-Dade County (MDC), as represented by the County Mayor or its authorized designee.
28. The words "COUNTY PROVIDED DRAWINGS" to mean items such as general drawings, detail drawings, graphs, diagrams, sketches, calculations, and catalog cuts which are prepared by the County to detail the expected system. Drawings are intended to provide a general concept of the County's expectations. Drawings are not to scale and are not to be considered "as-built" drawings.



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29. The words "COUNTY REPRESENTATIVE/PROJECT MANAGER" to mean the person designated by the County with responsibility for the TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP) who must be empowered to act on behalf of the County.
30. The words "CONTRACT DATE" to mean the date on which this Agreement is effective.
31. The words "CONTRACT MANAGER" to mean Miami-Dade County's Director, Internal Services Department (ISD) - Procurement Management Services (PMS), or the duly authorized representative designated to manage the Contract.
32. The words "CUSTOMIZATION" or "SOFTWARE CUSTOMIZATION" to mean software that is specially developed for some specific organization to accommodate that organization's particular preferences, requirements and expectations.
33. The word "DAYS" to mean Calendar Days unless specified otherwise.
34. The word "DEFECT" to mean the inability of a system, subsystem, assembly, or component to perform its required function. This shall not cover expendable items that are subject to normal wear and aging unless they do not perform adequately within their expected life span, or are a contributing cause to failures in other components.
35. 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.
36. The word "DELIVERY" to mean receipt at MDC of the system in a sound, whole, ready for operation, ready to Acceptance Testing condition. The Contractor shall complete and deliver all equipment and materials defined in the Contract Documents, to designated delivery points.
37. The words "DELIVERY POINT(S)" to mean the location to which the end products are expected to be delivered.
38. The words "DESIGN REVIEW" to mean the stages of system development where equipment and procedures are demonstrated prior to receiving approval to advance the effort to the next level. Stages include a Conceptual Design Review, a Preliminary Design Review and a Final Design Review.
39. 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.
40. The words "DIRECTOR, PROCUREMENT" to mean Director of Procurement for MDC, an official designated by MDC as the Principal Contracting Officer.
41. The word "DEPARTMENT" to mean Miami-Dade County Transit department.



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42. The words "DOWNLOAD" to mean the process of transferring data from a system containing the information, into a designated recipient system.
43. The words "END PRODUCT" to mean:
 - a. The Contract item(s) to be purchased by MDC in accordance with the Contract Documents.
 - b. End Product(s) includes, but is not limited to, drawings, specifications, instructions, books, education programs, spare parts and/or services.
44. The word "EQUAL" to mean the make or quality of material or equipment in this Contract, the Agency's decision as to whether any material or equipment proposed is equal to that specified shall be binding on both the Contractor and MDC.
45. The words "ESCROW DEPOSIT" to mean placement of Source Code, development tools and documentation for Contractor-Developed Core TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP) with an agreed with third party who will insure the safe keeping of these items and shall also release the items to MDC under specific defined conditions.
46. The words "EXTRA WORK" to mean Work required by the County consistent with the general Scope of Services described in the Contract Documents. Such Work shall be completed by the Contractor based on a negotiated Change Order issued by the County to the Contractor.
47. The word "FAILURE" to mean the inability of a system, subsystem, assembly, or component to perform its required function. An improper condition requiring the equipment/system to be withheld or removed from service for corrective action.
48. The words "FAIL SAFE" to mean:
 - a. A characteristic of a system which insures that any malfunction affecting safety shall cause the system to revert to a state that is known to be safe.
 - b. To be considered "fail safe" the systems shall also automatically furnish an acceptable indication in accordance with the Specification that a failure has occurred
49. The word "FIRMWARE" to mean computer programs and data loaded in a class of memory that cannot be modified by the computer during normal operation and is not erased by loss of power.
50. The words "FIRST USED IN SERVICE" to mean the system has been installed and is operational, meeting all specified requirements to the county's satisfaction. The system has been tested and information (in various formats) can be published via the centralized software; no errors occur, no elements malfunction, and the issuance of a Certificate of Acceptance is imminent.
51. The words "FINAL ACCEPTANCE OF TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP)" to mean when all corrective actions and retrofit (if any) have been fully completed, and the System is considered by MDC to be fully compliant with the Contract.
52. The words "FIRST ARTICLE CONFIGURATION INSPECTION (FACI)" to mean inspection and approval of the hardware configuration for each type of TRANSIT



OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP) equipment to ensure that the technical requirements are met and to establish a baseline for the quality of workmanship to be maintained for production.

53. The words "FIRST ARTICLE INSPECTION/TEST/ACCEPTANCE" to mean the physical examination and approval by MDC of an initial part, major assembly, subassembly, system, subsystem, apparatus, or material, manufactured or assembled by either the Contractor or Subcontractors. The first article approval establishes the baseline design and the minimum level of quality. Although the exercise of First Article Approval shall be at MDC's option, the Contractor shall assume that MDC will subject all equipment to first article examination and approval.
54. The word "GAP ANALYSIS" to mean a technique for determining the steps to be taken in moving from a current state to a desired future-state. In software development, for instance, a gap analysis can be used to document the services and/or functions that need to be eliminated and the ones that need improvement. Gap analysis seeks to answer the questions: "Where are we?" (Current state) and "Where we do we want to be" (Future/target state).
55. The word "INSPECTOR" to mean the person designated by MDC as its quality control representative. The Inspector's authority is derived through the Project Manager.
56. The words "INTELLECTUAL PROPERTY" to mean information, systems, TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP) programs, processes, technology, services, methodologies, products and any other materials or rights, tangible or intangible all relating to the TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP).
57. The word "INTERFACE" to mean the points where two or more physical subsystems or systems meet to transfer energy, data or information.
58. The word "LICENSEE" to mean one to whom a license is granted.
59. The word "LICENSOR" to mean one who owns the TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP) and all portions thereof.
60. The words "LOCAL AREA NETWORK" to mean a data communication network used to connect multiple computer workstations in close proximity to one another, i.e., in one office or building.
61. The words "MAINTENANCE, CORRECTIVE" to mean the action performed, as a result of a failure, to restore a system or component item to a specified condition.
62. The words "MAINTENANCE, PREVENTIVE" to mean the action performed in an attempt to maintain equipment or operating function in a specified condition by providing systematic inspection and maintenance.
63. The word "MANUFACTURER" to mean the original manufacturer supplying materials, equipment for the TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP), or apparatus for installation or usage by MDC.



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64. The word "MATERIAL (SUPPLIES)" to mean any substances specified for use in the construction and/or manufacture of the Procurement End Product(s), or to be furnished to MDC as loose items as part of the Procurement.
65. The letters "MDC" to mean Miami-Dade County, a political subdivision of the State of Florida.
66. The letters "MDT" to mean Miami-Dade Transit, a department within Miami-Dade County.
67. The words "NATIONAL FIRE PROTECTION ASSOCIATION (NFPA)" to mean the national safety organization that issues fire safety standards.
68. The word "NOISE" to mean interference presented on a system by undesirable voltages or currents.
69. The word "NOTICE" to mean a written notice.
70. The word "OPTION" to mean a unilateral right in a contract by which, for a specified time, MDC may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract.
71. The word "PACKET" to mean a data block with a unique address, control, and forward error correction signals transmitted as a unit through a telecommunications system.
72. The words "PARTY, PARTIES" to mean entity(ies) entering into the agreement.
73. The words "PRE-EXISTING WORK" to mean work completed and/or owned by the Contractor that may be provided to MDC for the TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP) within the Terms of the Contract.
74. The word "PROJECT" to mean the project as described in the Contract documents.
75. The words "PROJECT MANAGER" to mean the authorized representative having the responsibility to oversee and manage the day to day activities of the contract.
76. The word "PROOF" (used as a suffix) to mean that apparatus is designated as splash proof, dust proof, etc., when so constructed, protected, or treated that its successful operation is not interfered with when subject to the specified material or condition.
77. The word "PROPOSAL" to mean the Offer in response to MDC's Request for Proposal, including the Contract Documents with Specifications, to be submitted in the prescribed manner, properly signed and certified using the forms provided by MDC as required and all data to be supplied by the to be in conformance with said Documents. The Proposal includes the Price Proposal.



78. The word "PROPOSER" to mean any individual, legal proposer; partnership; corporation or joint venture submitting a Proposal on the Form for Proposal provided, for the work contemplated, acting directly or through a duly authorized representative.
79. The word "PROVIDE" as used in "Exhibit 1 - Scope of Services" Section of these Specifications, means design, furnish, test to a fully operational condition, and document, in the manner specified, and to the greatest extent compatible with the intent.
80. The word "QUALIFY" as used in these Specifications shall be the determination that an equipment, assembly, sub-assembly, or any part thereof is satisfactory for continued service under the Contractor's warranty, or that the time is suitable for repair or overhaul to restore it to warrantable service, or that the item must be replaced with a new (or warrantable rebuilt) part.
81. The word "REDUNDANCY" to mean the existence in a system of more than one means to accomplish a given function, for the purpose of increasing security, availability or reliability.
82. The word "REFERENCE" to mean where reference is made in the Contract Documents to publications or standards issued by associations or societies, the intent shall be to specify the current edition of such publications or standards in effect on the date of the RFP Advertisement, notwithstanding any reference to a particular date.
83. The words "RELATED DEFECT" to mean damage inflicted on any component or subsystem as a direct result of a defect.
84. The word "REPRESENTATIVE" to mean any duly authorized agent of MDC or the Contractor.
85. The words "SCOPE OF SERVICES" to mean the document appended hereto as Exhibit 1, which details the work to be performed by the Contractor.
86. The words "SERVICE" as in "SERVICE USE" to mean operation of the System under normal conditions.
87. The words "SOFTWARE" to mean Contractor proprietary licensed software as identified in Exhibit 2, Schedules A and B of this Agreement.
88. The word "STANDARD" to mean a set of universally acknowledged conditions or protocols, established by a recognized authority as a rule for the measure of quantity, weight, extent, value, performance, or quality.
89. The word "STATE" to mean The State of Florida.
90. The words "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.
91. The word "SUNSET" (as a verb) to mean defining the ending and/or termination of agreements between the Contractor and MDC.



92. The words "SUPPLEMENTAL AGREEMENT" to mean the Contract may be amended via Supplemental Agreement by the County to document agreed upon additions, deletions, change orders, revisions, modifications, or alterations of the contract documents and Work.
93. The words "SUPPLIER" or "VENDOR" to mean the persons, or corporations who furnish materials/services to the Contractor. Supplier furnished materials/services shall comply with all the contract requirements.
94. The word "SURETY" to mean the corporate body bound with and for the Contractor for the full and complete performance of the Contract and for the payment of all legal debts pertaining to the work, and who executed Bond(s) furnished by the Contractor.
95. The words "SYSTEM" or "SOLUTION" to mean the Transit Operations System Replacement Project (TOSRP).
96. The words "SYSTEM DEFECT(S)" as used in the Specifications, to mean the failure of identical items by specific location and function in the System, covered by the Warranty, and occurring in the warranty period, in a proportion of the TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP) delivered under this Contract.
97. The words "TECHNICAL SPECIFICATIONS" to mean:
 - a. Specifications pertaining generally to the method and manner of performing the work and/or the qualities and quantities of equipment and materials and End Product(s) to be furnished under the Contract.
 - b. The technical specifications may include provisions adopted and issued by MDC or may include other standards incorporated in the Contract Documents by reference.
98. The words "THIRD PARTY SOFTWARE" shall mean software developed by an organization or individual other than the two principals (Contractor and County) involved in this Agreement and licensed by Contractor to County pursuant to this agreement.
99. The word "TIGHT" (used as a suffix) to mean that apparatus is designated as water tight, dust tight, air tight, etc., when so constructed that the enclosing case will exclude the specified material.
100. The words "USER CONFIGURABLE/SETTABLE" to mean Miami-Dade County will be able to make changes without the need for source code modification or Contractor support.
101. The Words "WARRANTY" OR "ONE YEAR WARRANTY" to mean the Contractor's obligation to ensure proper functionality of the Work and all material, components, parts, equipment, products, hardware and software systems furnished pursuant to the Contract Documents are, shall be, and shall perform, in accordance and conformance with the requirements of the Contract Documents.
102. The words "WIDE AREA NETWORK (WAN)" to mean a data communication network connecting multiple workstations or local area networks (LANs) not located in close proximity to each other.



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- 103. The words "WIRELESS LAN" to mean a local area network that transmits over the air typically in the 2.4 GHz or 5GHz unlicensed frequency band. It does not require line of sight between sender and receiver. Wireless base stations (access points) are wired to an Ethernet network and transmit a radio frequency over an area of several hundred feet through walls and other non-metal barriers. Roaming users can be handed off from one access point to another like a cellular phone system.
- 104. The words "WORK", "SERVICES", "PROGRAM", "PROJECT" or "ENGAGEMENT" to mean all matters and things that will be required to be done by the Contractor in accordance with "Exhibit 1 - Scope of Services" and the terms and conditions of this Solicitation. Work shall include extra work desired by the County authorized via Change Order to the Contractor.
- 105. The words "WORKING DAYS" to mean all days excluding Saturdays and Sundays, and all County observed holidays.

ARTICLE 1.1 ADDITIONAL DEFINITIONS

- 1.1.2 Wherever in the Contract Documents the words "directed", "required", "ordered", "designated", "prescribed", or similar words are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription" of the County or the County is intended unless otherwise expressly stated. Similarly, the words "approved", "satisfactory", or similar words, shall mean "approved by", or "satisfactory to" the County or the County, unless otherwise expressly stated.
- 1.1.3 Where "as shown", "as indicated", "as detailed", or similar words are used, it shall be understood that the reference is made to the Contract Documents unless stated otherwise.

ARTICLE 1.2. ABBREVIATIONS

ADA	American with Disabilities Act
ANSI	American National Standards Institute
AVL	Automatic Vehicle Locator
BPS	Bits Per Second
CAD	Computer Aided Dispatch
CD-ROM	Compact Disc-Read Only Memory
FACI	First Article Configuration Inspection
FAT	First Article Test
FCC	Federal Communications Commission
GPS	Global Positioning System
GUI	Graphical User Interface
ISO	International Standards Organization
LAN	Local Area Network
LOC	Letter of Credit
NTP	Notice To Proceed
NFPA	National Fire Protection Agency
ODBC	Open Data Base Connectivity
OSHA	Occupational Safety and Health Administration



OEM	Original Equipment Manufacturer
PIN	Personal Identification Number
PROM	Programmable Read Only Memory
RAM	Random Access Memory
RDBM	Relational Database Manager
RFP	Request for Proposals
TRFP	Test Request for Proposals
ROM	Read Only Memory
SAN	Storage Area Network
COUNTY	Miami-Dade County
TCP/IP	Transmission Control Protocol/Internet Protocol
WAN	Wide Area Network

ARTICLE 2. ORDER OF PRECEDENCE AND LIST OF EXHIBITS

- 2.1 If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) Any Amendment (s) to this agreement 2) these terms and conditions, 3) the Scope of Services (Exhibit 1), 4) Software License Agreement (Exhibit 2), 5) Software Escrow Agreement (Exhibit 4), 6) Software Maintenance and Support Agreement (Exhibit 3), 7) Contractor's Proposal, 8) the Miami-Dade County's RFP No. 746, and any associated addenda and attachments thereof.
- 2.2 The following is a list of the exhibits under this Agreement:
 - a) Exhibit 1 – Scope of Services
 - b) Exhibit 2 – Software License Agreement
 - c) Exhibit 3 – Software Maintenance and Support Agreement
 - d) Exhibit 4 – Software Escrow Agreement
 - e) Exhibit 5 – Project Schedule
 - f) Exhibit 6 – Payment Schedule
 - g) Exhibit 7 – Approach to Providing the Services
 - h) Exhibit 8 – Price Schedule

ARTICLE 3. RULES OF INTERPRETATION

- 3.1 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.
- 3.2 Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.



3.4 The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement. 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.

3.5 Referenced Standards

Whenever the Contract Documents reference a standard, said standard shall be, unless otherwise indicated, the latest version or edition in effect on the date on which the Best and Final Offers were due. In the case of a conflict between referenced standards and the Contract Documents, the Contract Documents shall govern.

ARTICLE 4. NATURE OF THE AGREEMENT

4.1 This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

4.2 The Contractor shall provide the services set forth in "Exhibit 1- Scope of Services", and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.

4.3 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.

4.4 The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.

4.5 The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.



ARTICLE 5. CONTRACT TERM

5.1 The Contract shall become effective on _____ and shall be in effect for up to twelve (12) years from the date of the Notice To Proceed (NTP). The County, at its sole discretion, reserves the right to execute Software Agreements for: Software License, Software Escrow, and Software Maintenance and Support Agreements, for up to nine years, on a year-to year basis, included in the 12 year term. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

ARTICLE 6. NOTICE REQUIREMENTS

6.1 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) to the Project Manager: MDT Director or Designee

Miami-Dade County
Attention: MDT Project Manager
Phone: 786-469-5081
Fax: 786-469-5490
E-mail: nsh@miamidade.gov

and,

b) to the Contract Manager:

Director of Miami-Dade County Internal Services Department (ISD) - Procurement Management Services (PMS) Designee

Miami-Dade County
Internal Services Department (ISD) - Procurement Management Services (PMS)
111 N.W. 1st Street, Suite 1300
Miami, FL 33128-1974

Attention: Director, Internal Services Department (ISD)
Phone: (305) 375-5548
Fax: (305) 375-2316

(2) To the Contractor

Trapeze Software Group, Inc.
5800 Explorer Drive, 5th Floor
Mississauga, Ontario, L4W 5K9 Canada



Attention: Legal Department
Phone: (905) 629-8727
Fax: (905) 629-8408

And

Attention: Director of Sales
Phone: (905) 629-8727
Fax: (905) 629-8408

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

- 7.1 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 FOUR MILLION EIGHTY-EIGHT THOUSAND FIVE HUNDRED THIRTY DOLLARS (USD) (\$ 4,088,530.00 (USD)). Additionally, at the sole discretion of the County, software and maintenance agreements may be obtained for a cost of FOUR MILLION SEVEN HUNDRED TWENTY-FIVE THOUSAND TWO HUNDRED SEVENTY-FOUR DOLLARS (USD), (\$ 4,725,274.00 (USD)), over a nine-year period, pursuant to Schedule C - "Software Maintenance Pricing". The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.
- 7.2 All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense. With respect to travel costs and travel-related expenses, the Contractor agrees to adhere to Section 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses, including employee lodging, transportation, per diem, and all miscellaneous cost and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

ARTICLE 8. PRICING

- 8.1 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. The County's pricing shall be in accordance with Price Schedule (Exhibit 8) for this Agreement.

ARTICLE 9. METHOD AND TIMES OF PAYMENT



- 9.1 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 Software license fees, hardware costs, Services, expenses, and annual maintenance fees, the Contractor may bill the County in accordance with Exhibit 6 - the Payment Schedule. All invoices shall be taken from the books of account kept by the Contractor, documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor.
- 9.2 It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.
- 9.4 Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:
- Miami-Dade County
701 NW 1st Ct, 12th Floor
Miami, FL 33136
Attention: TOSRP Project Manager
- 9.5 The County may at any time designate a different address and/or contact person by giving written notice to the other party.
- 9.6 In the event expenditures reimbursed to the Contractor under the Contract are subsequently disallowed by the County, due to accounting errors, changes not in conformity with the Contract, or any other reason the Contractor shall immediately refund such amounts to the County.
- 9.7 Payments made under the Contract by the County shall not be construed as relieving the Contractor from sole responsibility for all, material, equipment and work upon which payments have been made or as an acceptance of defective work or acceptance of improper material, or as condoning any omission of required work. No payment or certificate, final or otherwise, shall be construed as relieving the Contractor from its contractual obligations to make acceptable any defects and consequences thereof, discovered in the Work, even when discovered after completion or acceptance of same. No payment or certificate, final or otherwise, shall be construed as a waiver of any of the Contractor's obligations set forth in the Contract.

ARTICLE 10. INDEMNIFICATION AND INSURANCE



- 10.1 The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense ("Losses"), which the County or its officers, or employees, agents or instrumentalities ("Indemnified Parties") may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors, but only to the extent that such Losses are not the result of negligence or acts or omissions on the part of the Indemnified Parties. The Contractor shall settle/pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Indemnified Parties, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon, provided that the Indemnified Parties give the Contractor reasonable notice of such claims, suites or actions. The Contractor expressly understands and agrees that any insurance or Bond protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Indemnified Parties or its officers, employees, agents and instrumentalities as herein provided.

The Contractor's entire liability and responsibility for any and all claims, damages or losses arising from or in connection with this Contract or the use of the Contractor's software by the County or the development, modification or maintenance of the Contractor's software, shall be absolutely limited to the amount of the Contract amount as it may be or have been changed from time to time in accordance with the Contract documents. Except for, and/or to the extent covered by, liquidated damages incurred pursuant to Article 56, neither party shall be liable to the other party or any third party for losses or damages suffered by a party or any third party, whether suffered directly or indirectly or that are immediate or consequential (to the fullest extent permitted by law), which fall within the following categories: a) special damages; b) loss of profits, anticipated savings, business opportunity or goodwill; or c) loss of data or information of any kind.

- 10.2 Upon County's notification, the Contractor shall furnish to the Internal Services Department (ISD) - Procurement Management Services (PMS), Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:
1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
 2. General Liability Insurance on a comprehensive basis in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage. **The mailing address of Miami-Dade County 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, as the certificate holder, must appear on the certificate of insurance.**
 3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$500,00 combined single limit per occurrence for bodily injury and property damage.



This project is funded by the American Recovery & Reinvestment Act (ARRA)

4. Professional Liability Insurance in an amount not less than \$1,000,000 with a deductible per claim not to exceed ten percent (10%) of the limit of liability.
- 10.3 The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:
 - 10.3.1 The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.
- OR
- 10.3.2 The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Financial Services and are members of the Florida Guaranty Fund.
- 10.4 **Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.**
- 10.5 **NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.**
- 10.6 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.
- 10.7 Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days after notification of recommendation to award. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall have an additional five (5) business days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Contractor shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.
- 10.8 The Contractor shall be responsible for ensuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in



the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

ARTICLE 11. MANNER OF PERFORMANCE

- 11.1 The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County, the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- 11.2 The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- 11.3 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.
- 11.4 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.
- 11.5 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.
- 11.6 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 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

- 12.1 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 county issued identification.

ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

- 13.1 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.
- 13.2 The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

- 14.1 The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal; questions as to the interpretation of the Contract Documents; and claims for damages, compensation and losses.
- 14.2 The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the County's Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the County's Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the County's Project Manager as soon thereafter as is practicable.
- 14.3 The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the County's Project Manager. In the event that the Contractor and the County's Project Manager are unable to resolve their difference, the Contractor may initiate a claim of dispute in accordance with the procedures set forth in Article 69. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.

ARTICLE 15. MUTUAL OBLIGATIONS

- 15.1 This Agreement, including attachments and appendices to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly



authorized representatives of both parties.

- 15.2 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.
- 15.3 In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.
- 15.4 The County shall:
- (i) Provide all data, information, assistance, access to its computers (including direct remote electronic access) and facilities at its location, as reasonably required by the Contractor, in order to facilitate the optimum performance by the Contractor of its obligations.
 - (ii) Designate a person to manage the project for the County, (the "Project Manager") who is appropriately experienced in its business, skilled in managing software installation and implementation projects and vested with sufficient authority to make and convey the County's decisions relating to the services being provided and Software installed by the Contractor and to use all reasonable endeavors to ensure that any agreed timescales for the County's actions are achieved.
 - (iii) Deliver all data and information to the Contractor during the implementation process necessary to enable the Contractor to install and implement the Contractor's Software.
 - (iv) Take steps and acts necessary to allow the Contractor to perform its obligations under this Amendment in a timely and efficient manner. Such steps and acts shall include, without limitation, the purchase, installation and implementation by the County of the network communication infrastructure as may be necessary to the fulfillment of the Contractor's obligations set out herein.

ARTICLE 16. QUALITY ASSURANCE RECORD KEEPING

- 16.1 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 Exhibit 1 - Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 17. AUDITS

- 17.1 The County, or its duly authorized representatives or governmental agencies, shall until



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

- 17.2 Pursuant to County Ordinance No. 03-2, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 18. SUBSTITUTION OF PERSONNEL

- 18.1 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 fifteen (15) business days prior to effecting such substitution.

ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

- 19.1 The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County. Said consent shall not be unreasonably withheld.
- 19.2 The County may assign its rights and obligations under this Agreement, to the extent allowed by applicable laws or governmental regulations. Nothing herein shall prohibit the County from allowing a third-party service provider that provides outsourcing services directly to the County from accessing the TOSRP in order to provide any such outsourcing services to the County.

ARTICLE 20. SUBCONTRACTS/SUBCONTRACTUAL RELATIONSHIPS

- 20.1 Prior to the County's review of a proposed agreement, subcontract or purchase order, or proposed Subcontractor or Supplier, the Contractor shall provide the County with the name of the proposed Subcontractor or Supplier, the task to be performed by the proposed Subcontractor or Supplier, and the qualifications of the proposed Subcontractor or Supplier to perform said portion of the Work.
- 20.2 The Contractor shall not knowingly enter into any lower tier transactions with any person or company who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in the Agreement, unless authorized in writing by the County. Furthermore, the Contractor shall include the provisions of this paragraph, without modification, in all lower tier contracts and in all solicitations for lower tier contracts.



- 20.3 The Contractor shall be responsible to the County for acts and omissions of actions in relation to its own employees, and for the acts and omissions of any Subcontractor or any Supplier in relation to its employees. The Contractor shall also be responsible for the coordination of the work of all Subcontractors and Suppliers. When a portion of the Work which has been subcontracted by the Contractor is not prosecuted in accordance with the Contract Documents, the Subcontractor or Supplier shall be immediately replaced upon request of the County and shall not again be employed on the Work.
- 20.4 The County shall not be responsible for settling any differences between the Contractor and its Subcontractors or Suppliers.
- 20.5 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.
- 20.6 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.
- 20.7 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.
- 20.8 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.
- 20.9 The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County in the event the County finds the Contractor in breach of this Contract, permitting the County to request completion by the Subcontractor of its performance obligations under the subcontract. The clause shall include an option for the County to pay the Subcontractor directly for the performance by such Subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more



fully described herein.

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

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

ARTICLE 22. SEVERABILITY

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

ARTICLE 23. TERMINATION AND SUSPENSION OF WORK

- 23.1 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.
- 23.2 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.
- 23.3 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.
- 23.4 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 at least thirty (30) business days written notice to the Contractor and in such event:
- 23.4.1 The Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
- i. stop work on the date specified in the notice ("the Effective Termination Date");



- ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
- iii. cancel orders;
- iv. assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services; and
- v. take no action which will increase the amounts payable by the County under this Agreement.

23.5 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 up to the Effective Termination Date; and
- ii. non-cancelable deliverables that are not capable of use except in the performance of this Agreement and Work Order and has been specifically developed for the sole purpose of this Agreement and Work Order, but not incorporated in the Services.

23.6 All compensation pursuant to this Article is subject to audit.

ARTICLE 24. EVENT OF DEFAULT

24.1 An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing, and in addition to those instances referred to herein as a breach, an Event of Default shall include the following:

- i. the Contractor has not delivered Deliverables in accordance with a written project schedule mutually agreed to by the parties;
- 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.
- 24.2 When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with the terms of this Agreement. Until the County receives such assurances, the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed timeframe, the County may:
- i. treat such failure as a repudiation of this Agreement; and
 - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- 24.3 In the event the County shall terminate this Agreement for default, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data, and the County shall return to the Contractor all copies of the Contractor's proprietary software, all related software documentation, and any other proprietary material of the Contractor, or will certify to the Contractor that all such copies have been destroyed.

ARTICLE 25. NOTICE OF DEFAULT-OPPORTUNITY TO CURE

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

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

- 26.1 If an Event of Default occurs and subject to the provisions of Article 46, the Contractor shall be liable for all damages resulting from the default, including but not limited to:
- a. the difference between the cost associated with procuring Services hereunder the amount actually expended by the County for re-procurement of Services, including procurement and administrative costs; and
 - b. such other direct damages.



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

ARTICLE 27. TERMINATION FOR DEFAULT

- 27.1 If the Contractor fails to begin Work within the time specified in the Notice to Proceed; fails, neglects or refuses to remove materials or perform any work rejected as defective or unsatisfactory; becomes insolvent, 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; the Contractor has failed to obtain the approval of the County where required by this Agreement; the Contractor has failed in the representation of any warranties stated herein; allows any final judgment to stand against it unsatisfied for a period of thirty (30) working days; makes an assignment for the benefit of creditors; fails to protect, repair or make good any damage or injury to property caused by Contractor's negligence or willful misconduct; has failed to make prompt payment to subcontractors or suppliers for any Work, or fails to perform or adhere to any provision of the Contract Documents, the County, after having given seven (7) days written notice to the Contractor of any of the above identified delays, neglects, or defaults on the part of the Contractor, shall be entitled, without invalidating the Agreement, to declare the Contractor in default, take the prosecution of the Work out of the hands of the Contractor, appropriate or use materials and equipment and enter into a new contract or new contracts for the completion of the Work, or any portion of the Work; or may use such other methods as in the County's reasonable opinion will be expedient for the completion of the Work.

In the event the costs and legal charges, including attorneys' fees, incurred by the County, less the credits provided for, exceeds the sum which would have been payable under the Agreement for the completed Work, the County may hold the Contractor or its Surety liable to the County for the amount of said excess.

- 27.2 Subject to the limitations of liability pursuant to Article 46 in the event the County exercises its right of termination under this provision, the Contractor shall be liable to the County for any re-procurement charges, outstanding warranty claims, its excess costs, including reasonable attorneys' fees, and, in addition, for liquidated damages, pursuant to provisions herein, for each day up to and including the date of termination.
- 27.3 This Agreement may be terminated by Contractor if any of the following events of default occur: (1) if the County is in default of any term or condition of this Agreement, and fails to cure such default within thirty (30) days after receipt of written notice of such default, (2) the County fails to pay any amount when due hereunder.
- 27.4 If, after the Contractor is terminated under this provision, a determination is made that the Contractor was not in default, the rights and obligations of the parties shall be the same as if a termination for convenience had been issued pursuant to provisions herein and such termination will be compensated in accordance with the provisions of Article 28.1



- 27.5 The rights and remedies of the County and Contractor provided in this provision are in addition to any other rights and remedies provided by law or under the Contract Documents.
- 27.6 If an Event of Default occurs, in the determination of the County, the County shall notify Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured within thirty (30) or this Agreement with the County may be terminated. The County shall allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.
- 27.7 If it is determined by the either party that the provisions of the Contract have not or were not violated by either party, or if it is subsequently found that any termination for default was legally improper, then the termination for default will be treated as if it had been a termination for convenience.

ARTICLE 28. TERMINATION FOR CONVENIENCE OF MIAMI-DADE COUNTY

- 28.1 The Agreement may be terminated by the County in accordance with this provision in whole, or in part, whenever the County determines that such termination is in its best interests. Any such determination shall be effected by delivery to the Contractor of a forty-five (45) days prior written Notice of Termination specifying the extent to which the Agreement is terminated and the date upon which such termination becomes effective.
- 28.2 After receipt of a Notice of Termination and except as otherwise directed by the County, the Contractor shall:
- (A) Stop work under the Agreement on the date and to the extent specified in the Notice of Termination;
 - (B) Place no further orders or subcontracts for materials, services or equipment, except as may be necessary for completion of such portion of the Work not terminated;
 - (C) Terminate all orders and subcontracts to the extent that they relate to the terminated portion of the Agreement;
 - (D) Transfer title and deliver to the County in the manner, at the times, and to the extent directed by the County;
 - (E) Hardware procured as a part of, or acquired in connection with the performance of, the portion of the Agreement terminated; and
 - (F) Complete performance of such portion of the Agreement as was not terminated by the Notice of Termination; and



- (G) Take such action as may be necessary, or as the County may direct, for the protection and preservation of the equipment related to this Agreement, which is in the possession of the Contractor and in which the County has or may acquire an interest, until the effective date of termination.
- 28.3 After receipt of a Notice of Termination, the Contractor shall submit to the County its termination claim, if any, in the form and with the certification prescribed by the County. Such claim shall be submitted promptly but in no event later than one year from the date of termination. The failure of the Contractor to submit its termination claim within the time specified shall preclude the recovery of any costs or damages incurred by the Contractor as a result of the total or partial termination of the Agreement.
- 28.4 Subject to the provisions of Article 24, the Contractor and the County may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of the Agreement pursuant to Article 24, which amount or amounts may include a reasonable allowance for profit on the portion of the Agreement performed; provided, that such agreed upon amount or amounts, shall not exceed the total Contract Sum as reduced by the amount of payment otherwise made and as further reduced by the portion of the Agreement not performed. No claims for lost or anticipated profit shall be allowed for the terminated portion of the Agreement.
- 28.5 If an agreement is reached by the Contractor and the County upon the amount to be paid the Contractor by reason of the termination of the Agreement, the Agreement shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in Article 27, prescribes the amount to be paid to the Contractor in the event of failure of the Contractor and the County to agree upon the whole amount to be paid to the Contractor by reason of the termination of the Agreement.
- 28.6 In the event of submission of a timely termination claim by the Contractor and the failure of the Contractor and the County to agree upon the amount to be paid to the Contractor by reason of a termination pursuant to Article 27, the County will determine, based on the information available to the County, the amount, if any, due to the Contractor by reason of the termination and will pay to the Contractor the amounts determined as follows:
- (A) With respect to all work performed on the terminated portion of the Agreement, prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:
1. The cost of acceptable work performed, except defective work, and materials delivered;
 2. The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in Article 28; and
 3. Reasonable profit for the portion of the Agreement performed but no lost or anticipated profit on the portion of the Agreement not performed.
- (B) The reasonable cost of the preservation and protection of property incurred.



- 28.7 The total sum to be paid to the Contractor under Article 28 shall not exceed the Contract Sum as reduced by the amount of payments otherwise made and as further reduced by the value of that portion of the Agreement not performed. Except to the extent that the County shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under Article 28 the fair value of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the County, or to a buyer pursuant to Article 27.
- 28.8 In arriving at the amount due the Contractor under this provision, there shall be deducted:
- (A) All payments made to the Contractor by the County applicable to the terminated portion of the Agreement;
 - (B) Any claim which the County may in good faith have against the Contractor, so long as such claim has been asserted no more than six (6) months from the date of deduction of payment.

ARTICLE 29. ACCEPTANCE, TITLE, AND RISK OF LOSS

- 29.1 When a portion of the Work has been completed in compliance with the Contract Documents and all applicable tests, inspections, and rework have been completed therefore, the Contractor will recommend to the County that said portion of the Work be accepted. The recommendation of the Contractor will be subject to the approval and acceptance by the County.
- 29.2 Notwithstanding any provision of the Uniform Commercial Code or other applicable law, risk of loss and title for the TOSRP, system, subsystem, component, part, equipment, or other material or other portion of the Work shall vest in the County when the TOSRP is satisfactorily placed on the County's property at the location(s) identified by Miami-Dade Transit, or the system, subsystem, component, part, equipment, or other material is satisfactorily unloaded onto the County's property at the location(s) identified by Miami-Dade Transit, whichever is earlier. The Certificate of Acceptance of Final Inspection for the TOSRP, or other item of Work will be issued only after the TOSRP, and its systems, subsystems, components, parts and equipment or other item of Work has been received by the County, fully and satisfactorily tested, inspected and accepted. The Certificate of Acceptance of Final Inspection for the TOSRP, or other item of Work will be issued if the TOSRP, or other item of Work is subject to the satisfactory completion of any outstanding Work items, or the TOSRP, or other item of Work is placed in service.
- 29.3 Risk of loss for the existing, or TOSRP (and the systems, subsystems, components, parts, and equipment therefore, while in transit, including all aspects of loading and unloading while on County property), or otherwise not located on the County's property, shall be borne by the Contractor.
- 29.4 The title transferred to the County for any TOSRP equipment, shall be good, and free and clear of any and all security interests, liens, or encumbrances of any kind or nature. The Contractor shall not pledge, hypothecate, or otherwise encumber TOSRP any equipment thereof, or other portion of the Work in any manner that would result in any lien, security interest, charge, or claim upon or against any such item under the Uniform Commercial Code or any other law that may be applicable.



- 29.5 Adequate documentation for securing and transferring title to the TOSRP, equipment, shall be provided to the County by the Contractor a minimum of fourteen (14) business days before Delivery for Acceptance Testing of the TOSRP, or delivery of other portions of the Work to the County.
- 29.6 The issuance of a Certificate of Acceptance of Final Inspection, the Acceptance Certificate, the transfer of title for the TOSRP, or other portion of the Work or the approval or acceptance by the County of the TOSRP, or other portion of the Work shall not relieve or release the Contractor from liability for faulty workmanship or materials or the failure to strictly adhere to the requirements of the Contract Documents, pursuant to Contractor's warranty obligations under this Agreement.
- 29.7 Upon final completion of the customization and installation of the Software by the Contractor, the Contractor shall notify the County in writing. The County shall be entitled to a period of forty-five (45) business days to conduct such acceptance tests as it considers appropriate. At the end of this period, the Software will be deemed to have met the Contractor's standard of performance and shall be deemed to have been granted Acceptance, unless County notifies the Contractor otherwise. The County agrees that Acceptance shall be based on the requirements of the Scope of Services as defined by the operational review and as may be otherwise specified herein. In the event that the Acceptance test requirements are not satisfied and the Contractor is so notified, the Contractor shall within ten (10) business days, unless otherwise directed in writing by County Project Manager, deliver to the County the necessary revisions and/or a modification until Acceptance is achieved. The County shall not unreasonably deny a written request for an extension to the above ten (10) business day period, so long as the Contractor is proceeding in an expeditious manner.

ARTICLE 30. INTENTIONALLY OMITTED.

ARTICLE 31. CONFIDENTIALITY

- 31.1 All County and Contractor Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from each other in connection with this Agreement for which the parties hold the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the disclosing party, be used by the other party or its employees, agents, subcontractors or suppliers for any purpose other than for the fulfillment of both parties obligations under this Agreement, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither party nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the disclosing party. Additionally, the parties expressly agree to be bound by and to defend, indemnify and hold harmless the disclosing party, and its officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- 31.2 The County and Contractor shall advise each of its employees, agents, subcontractors



and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the disclosing party in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the parties agree to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.

- 31.3 It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the disclosing party shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 32. PROPRIETARY INFORMATION & PROPRIETARY RIGHTS

- 32.1 As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law. The Contractor acknowledges that all computer software in the County's possession does not 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.
- 32.2 During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.
- 32.3 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.
- 32.4 The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become



- engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.
- 32.5 All rights, title and interest to all data and interfaces developed by County, and copies thereof, which are specifically generated as a result of the use of the Licensed Software by the County., hereinafter referred to as "Developed Works" shall become the property of the County.
- 32.6 Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- 32.7 Except as otherwise provided in subsections 32.4, 32.5, 32.6 above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County.
- 32.8 Ownership: The County further acknowledges that all copies of the Software and Documentation in any form provided by the Contractor are the sole property of the Contractor. The County shall not have any right, title, or interest to any such Software, Source Code or Documentation or copies thereof except as provided in this Agreement, and further shall secure and protect all Software and Documentation consistent with maintenance of the Contractor's proprietary rights the rein.

ARTICLE 33. PUBLIC RECORDS DISCLOSURES

- 33.1 The Contractor has represented that the Software and Documentation are owned by it and are protected by applicable copyright laws. The Contractor further represents that the Software does constitute trade secrets of the Contractor as the term "trade secrets" is defined in Section 812.081 of the Florida Statutes. The Contractor claims exemption from disclosure of the Software as provided under Chapter 119, Public Records Law, Florida Statutes. The County agrees prior to any disclosure of the Software and/or Documentation under the Public Records Law that the County will promptly notify the Contractor of any request for disclosure so that the Contractor may take such action or actions the Contractor deems necessary to prevent such disclosure and/or to defend against or settle any suit or proceeding against the County for the failure to make disclosure of the Software as provided under Chapter 119, Public Records Law, or other laws requiring disclosure by the County.
- 33.2 In the event the Contractor elects to prevent disclosure as above provided, the Contractor agrees, at its own expense, to protect, defend and indemnify the County against any claim, demand, action, proceeding, loss, liability, cost and expense (including court costs and reasonable fees of attorneys) incurred or suffered by the



County as a result of any claim against the County for the failure to make disclosure of the Software as provided under Chapter 119, Public Records Law, or other laws requiring disclosure by the County.

- 33.3 Nondisclosure by the County shall not apply to information that; a) is or becomes known to the public without fault or breach on the part of the County; or b) the Contractor regularly discloses to third parties without restriction on disclosure
- 33.4 Notwithstanding anything to the contrary contained above or elsewhere in this Agreement, the County shall have the right to use the Software to provide access to the public to the data base, files or information derived from the use of the Software and/or to generate reports from such data, files or information or to provide such data, files or information on electronic media to the public where required or allowed by the laws of the State of Florida or other laws allowing disclosure by the County. The Contractor acknowledges and agrees that the County is the owner and custodian of its information and data, whether or not such is electronically retained, and regardless of the retention media and that the use of the Software in relation to such information, or data does not in any way restrict the County in the County's rights of disclosure of its data and information.

ARTICLE 34. VENDOR REGISTRATION/CONFLICT OF INTEREST

34.1 Vendor Registration

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

1. **Miami-Dade County Ownership Disclosure Affidavit**
(Section 2-8.1 of the County Code)
2. **Miami-Dade County Employment Disclosure Affidavit**
(Section 2-8-1(d)(2) of the County Code)
3. **Miami-Dade Employment Drug-free Workplace Certification**
(Section 2-8.1.2(b) of the County Code)
4. **Miami-Dade Disability and Nondiscrimination Affidavit**
(Section 2-8.1.5 of the County Code)
5. **Miami-Dade County Debarment Disclosure Affidavit**
(Section 10.38 of the County Code)
6. **Miami-Dade County Vendor Obligation to County Affidavit**
(Section 2-8.1 of the County Code)
7. **Miami-Dade County Code of Business Ethics Affidavit**
(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)
8. **Miami-Dade County Family Leave Affidavit**
(Article V of Chapter 11 of the County Code)
9. **Miami-Dade County Living Wage Affidavit**
(Section 2-8.9 of the County Code)
10. **Miami-Dade County Domestic Leave and Reporting Affidavit**
(Article 8, Section 11A-60 11A-67 of the County Code)
11. **Subcontracting Practices**
(Ordinance 97-35)
12. **Subcontractor /Supplier Listing**
(Section 2-8.8 of the County Code)
13. **Environmentally Acceptable Packaging**
(Resolution R-738-92)
14. **W-9 and 8109 Forms**
(as required by the Internal Revenue Service)
15. **FEIN Number or Social Security Number**
In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
 - Identification of individual account records



- To make payments to individual/Contractor for goods and services provided to Miami-Dade County
- Tax reporting purposes
- To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

16. Office of the Inspector General
(Section 2-1076 of the County Code)

17. Small Business Enterprises

The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

18. Antitrust Laws

By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

34.2 Conflict of Interest

Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 35. INSPECTOR GENERAL REVIEWS

35.1 Independent Private Sector Inspector General Reviews

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

35.2 Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below.

35.3 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.

- 35.4 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 36. INTENTIONALLY OMITTED.

ARTICLE 37. LOCAL, STATE AND FEDERAL COMPLIANCE REQUIREMENTS

- 37.1 Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including, but not limited to:
- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
 - b) Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.
 - c) Environmental Protection Agency (EPA), as applicable to this Contract.
 - d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment without regard to race, 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 a conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.

- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
 - f) Miami-Dade County Code Section 10-38 "Debarment".
 - g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
 - h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.
- 37.2 The Contractor shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the County or Contractor for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Contractor. The Project Manager shall verify the certification(s), license(s), permit(s), etc. for the Contractor prior to authorizing work and as needed.
- 37.3 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 38. NONDISCRIMINATION

- 38.1 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.
- 38.2 By entering into this Contract, the Contractor attests that it is not in violation of the American with Disabilities Act of 1990 (and related Acts); Section 508 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794d) 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. For more information on Section 508, see link: <http://www.section508.gov/index.cfm?fuseAction=1998Amend>.



ARTICLE 39. CONFLICT OF INTEREST

39.1 The Contractor represents that:

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

ARTICLE 40. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

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



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

ARTICLE 41. BANKRUPTCY

41.1 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 42. GOVERNING LAW

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

ARTICLE 43. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

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

- 1. Use of information only for performing services required by the contract or as required by law;
- 2. Use of appropriate safeguards to prevent non-permitted disclosures;
- 3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
- 4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
- 5. Making Protected Health Information (PHI) available to the customer;



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6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
 7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
 8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.
- 43.2 PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.
- 43.3 Incorporation of Federal Transit Administration (FTA) Terms
- A) The FTA provisions include certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in this contract. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F or any revisions thereto, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all DOT or FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any County requests which would cause the County to be in violation of the FTA terms and conditions.
 - B) The Contractor agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

ARTICLE 44. CONTRACT BONDS.

- 44.1 The Contractor shall furnish the following Bond(s) at its own expense:
- A) Performance Bond - Shall be provided to the County after contract award, and prior to NTP, in an amount of ten (10%) percent of the Contract Sum. The Performance Bond shall be accessible such that the County may, at its convenience, withdraw funds from the Bond in the event the Contractor fails to execute its performance obligations in accordance with the Contract Documents. The Performance Bond does not apply to the warranty obligations under the Contract. The Performance Bond shall remain in effect from NTP until sixty (60) days after issuance of the Certificate of Acceptance of Final Inspection for the TOSRP.
 - B) Payment Bond – Shall be provided to the County after award and prior to NTP, in the amount of 2 percent (2%) of the Contract sum, as it may be changed from time to time in accordance with the Contract documents. The Payment Bond shall remain in effect from NTP until sixty (60) days after issuance of the Certificate of Acceptance of Final Inspection for the TOSRP.
 - C) Additional Performance Bond – In addition to the Performance Bond provided pursuant to Section 44.1(A) above, Contractor shall provide to the County within five (5) business days of the issuance of the Certificate of Acceptance a



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Performance Bond in the amount of \$153,319.88. The Performance Bond shall remain in effect until the County issues the Certificate of Acceptance of Final Inspection.

44.2 Surety Bond Qualifications: The following specifications shall apply to bid, performance, payment, maintenance, and all other types of bonds.

A. All bonds shall be written through surety insurers authorized to do business in the State of Florida as surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A. M. Best Company, Oldwick, New Jersey:

Bond Amount		Best Rating	
\$500,001	to	\$1,500,000	B V
\$1,500,001	to	\$2,500,000	A VI
\$2,500,001	to	\$5,000,000	A VII
\$5,000,001	to	\$10,000,000	A VIII
Over		\$10,000,000	A IX

On bond amounts of \$500,000 or less, the provisions of Section 287.0935, Florida Statutes (1991) shall be in effect and Surety companies not otherwise qualifying with this paragraph may optionally qualify by:

1. The Surety is licensed to do business in the state of Florida;
2. The Surety holds a certificate of authority authorizing it to write surety bonds in the state;
3. The Surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued;
4. The Surety is otherwise in compliance with the provisions of the Florida Insurance Code; and
5. The Surety holds a currently valid certificate of authority issued by the United States Department of the Treasury under ss. 31 U.S.C. 9304-9308.

B. Surety insurers shall be listed in the latest Circular 570 of the U.S. Department of the Treasury entitled "Surety Companies Acceptable on Federal Bonds", published annually. The bond amount shall not exceed the underwriting limitations as shown in this circular.

C. The attorney in fact or other officer who signs a contract bond for a surety company must file with such bond a certified copy of his power of attorney authorizing him to do so. The Contract bond must be countersigned by the surety's resident Florida agent.

44.3 The Contractor may, in lieu of a surety performance bond, surety payment bond submit three (3) cash bonds or bank letters of credit, conditioned upon the faithful performance of the work in strict accordance with this Contract and with the Plans, Specifications and the completion of the same free from all liens and within the time limit herein specified; the said Bonds shall be so worded as to make the Contract a part thereof and shall contain a clause providing the right of suit or action for those benefits. Said bond shall



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be executed as disclosed by the text of said Bonds and Contract to the same extent as if he or they were the obligee therein specifically mentioned, and all such persons shall be held or deemed to the obligee thereof.

- 44.4 The Contractor shall promptly make payments in accordance with County Ordinance 94.40 (Prompt Payment) to all subcontractors, or any other entity, supplying Contractor with labor, materials, or supplies, used directly or indirectly by Contractor in the prosecution of the work provided for in the Contract Documents, and in the times and manner prescribed in the Contract Documents; and
- 44.5 If the Contractor fails to make payments to any subcontractor, or any other entity, supplying Contractor with labor, materials, or supplies, used directly or indirectly by Contractor in the prosecution of the work provided for in the Contract Documents, and in the times and manner prescribed in the Contract Documents, then subcontractor, or any other entity shall have a right of action against the Contractor and the Surety for the amount it is due. Such action shall not involve the County in any expense. The Contractor shall pay the County for all losses, damages, costs, and attorney's fees, including appellate proceedings that the County sustains because of a failure by Contractor to make any such payments.
- 44.6 A subcontractor, or any other entity as identified above, except a laborer, who is not in privity with the Contractor and who has not received timely payment for its labor, materials, or supplies may, within 60 days after performance of the labor or after complete delivery of the materials or supplies, and issuance of a properly submitted invoice, deliver to the Contractor and to the Surety written claim advising of the performance of the labor or delivery of the materials or supplies and of the nonpayment. No action for labor, materials or supplies may be instituted against the Contractor or the Surety unless notice has been given. No action shall be instituted against the Contractor or the Surety on the bond after 90 days from the performance of the labor or completion of delivery of the materials or supplies. A claimant may not waive in advance its right to bring an action under the bond against the Surety.
- 44.7 The Bonds shall be in the form as listed in the solicitation documents as "Surety Performance Bond", "Surety Payment Bond" or on forms otherwise provided and approved by the County and shall be executed by a Surety or Sureties acceptable to the County, authorized to issue surety bonds in the State of Florida.
- 44.8 Provisions of the Bonds shall not limit, in any way, any liability of the Contractor to the County.
- 44.9 Alterations, extensions of time, waiver of contractual provisions, extra and additional work, advance payments and other changes to the Contract Documents may be made without securing the consent of the Surety or Sureties for the Bonds. Such changes shall not, however, alter the Surety's or Sureties' responsibility relating to the Bonds.

ARTICLE 45. ADDITIONAL BOND SECURITY

- 45.1 If any Surety upon any Bond furnished in connection with the Agreement becomes reasonably unacceptable to the County, and in accordance with the requirements of Article 44.2, Surety Bond Qualifications, the Contractor shall promptly furnish another Surety acceptable to the County to protect the interests of the County and of persons or firms supplying labor or materials in the prosecution of the Work.



ARTICLE 46. LIMITATION OF LIABILITY

- 46.1 The Contractor's entire liability and responsibility for any and all claims, damages or losses arising from or in connection with this Contract or the use of the Contractor's software by the County or the development, modification or maintenance of the Contractor's software, shall be absolutely limited to the amount of the Contract amount as it may be or have been changed from time to time in accordance with the Contract documents. Except for, and/or to the extent covered by, liquidated damages incurred pursuant to Article 56, neither party shall be liable to the other party or any third party for losses or damages suffered by a party or any third party, whether suffered directly or indirectly or that are immediate or consequential (to the fullest extent permitted by law), which fall within the following categories: a) special damages; b) loss of profits, anticipated savings, business opportunity or goodwill; or c) loss of data or information of any kind.
- 46.2 Nothing herein shall be construed to waive or diminish the procedures and limitations of liability found ss. 768.26, Florida statutes.

ARTICLE 47. EXECUTION OF AGREEMENT

- 47.1 No later than ten (10) business days after Award, the Contractor shall deliver the following, properly executed: the Bonds (Performance and Payment) and Insurance as required by Article 10.2 as directed by Miami-Dade County. Miami-Dade County will execute all copies of the Agreement and will give one original of all the executed Contract Documents to the Contractor.
- 47.2 Notice to Proceed (NTP) will only be issued after the above documents stated on 47.1 have been provided to the County.

ARTICLE 48. REVIEWING DELIVERABLES

- 48.1 The Contractor shall submit all Deliverables which are required to be submitted for review and approval by the County in accordance with the specific requirements in the Contract Documents, and as specified herein. The Contractor understands that the County shall have final approval on such Deliverables.
- 48.2 In reviewing the Deliverables, the Contractor understands that the County will provide the Contractor with:
- a. a written notification of the County's approval,
 - b. a written notification that each Deliverable is approved subject to the Contractor providing prompt correction of a minor deficiency, or,
 - c. 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.



- 48.3 The Contractor understands that failure by the County to provide a notice of approval or disapproval by the end of twenty (20) business day period as will constitute approval.
- 48.4 Furthermore:
- a) Unless otherwise specified in the Project Schedule, for each Deliverable made hereunder, the County will have twenty (20) business days commencing on the first business day after receipt by the County of the Deliverable, to determine and notify Contractor in writing 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 54 "Extension of Time", within forty-five (45) 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:
 - 1. 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,
 - 2. 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 any discount provisions in the event the Work is not completed in accordance with other provisions of this Agreement.
 - d) The County reserves 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 shall 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, within five business days. If the County does not subsequently approve or accept all aspects of the Deliverable, the earlier conditional acceptance or approval may, in the sole absolute discretion of the County, be regarded as void and of no effect.

ARTICLE 49. TESTING AND ACCEPTANCE OF THE SYSTEM

- 49.1 There shall be multiple tests of the System and its functional components as described in "Exhibit 1 – Scope of Services". The purposes of the tests are to permit County to determine whether the System and the functional components properly function and provide the capabilities described in Exhibit 1 - Scope of Services document. Each test will be subjected to its own Acceptance by the County.



- 49.2 The Contractor shall notify the County in writing (via email) when the functional components of the System are ready for acceptance testing. Upon such notifications, the County Project Manager shall determine the date of the commencement of acceptance testing. The County, at its own discretion, shall conduct its first round of acceptance tests and will determine whether the Deliverables are in conformance with the Final Acceptance Criteria. The County shall notify Contractor in writing as to any deficiency, in list form to be incorporated by mutual agreement into a punch list during the System acceptance periods described in Article 65 "Project Schedule". The Contractor will promptly commence work on resolving such punch list issues and will redeliver revision to such Deliverables for further testing. The County will commence retesting after receiving the Contractor's notice that the Deliverables are ready for such further testing. The County shall determine the amount of time required to complete the additional acceptance testing. The process will be repeated until either the functional component has substantially conformed to the Final Acceptance Criteria or County decides to accept the functional component as is and the functional component is put into Production Mode.
- 49.3 The above process will be repeated for each functional component delivered hereunder provided that functional components may be tested in tandem as set forth in Article 65 "Project Schedule."
- 49.4 Final Acceptance of the System will be deemed to have occurred on the Deliverables meeting the Final Acceptance Criteria (which the parties will mutually agree to and develop from the functional and technical requirements as set forth in the Contract documents, provided that the parties recognize that the development of the Contract documents may result in the parties clarifying such requirements). Such Final Acceptance shall be evidenced by a written acknowledgement by the County Project Manager that the System meets all such functional and technical requirements.
- 49.5 Any dispute as to whether any Deliverable complies with any applicable acceptance criteria shall be subject to the dispute resolution process set forth in Article 69 of this Agreement.
- 49.6 Final Acceptance Certificate:
- A. The Contractor shall request from the County the Final Acceptance Certificate following the Contractor's receipt of the last Acceptance of Implementation identified as a Milestone # 13 in the Payment Schedule.
 - B. Upon receipt of the Contractor's request, the County will review the TOSRP to determine satisfactory implementation as required and intended by the Contract Document and will provide notice (a punch list) to the Contractor of any Work necessary for issuance of the Final Acceptance Certificate.
 - C. The Contractor shall meet all Deliverables in accordance with the Project Schedule.

ARTICLE 50. FAILURE TO EXECUTE AGREEMENT

- 50.1 Failure of the Proposer to whom the Agreement is awarded to execute the Agreement, to submit Bonds or to submit proof of insurance, as provided herein, shall be just cause for the cancellation of the Award.



ARTICLE 51. CANCELLATION OF AWARD

- 51.1 The County reserves the right to cancel the award of the Agreement before the issuance of the NTP when the County deems such cancellation to be in its best interests. In no event, will the County be liable, in any way, for the cancellation of the award or any expenses, costs or damages resulting there-from with the exception of reasonable costs incurred for bonding. The Contractor assumes sole risk and responsibility for any expenses or costs it incurs prior to the issuance of the Notice to Proceed, and shall not commence performance of the Work until the County issues NTP.

ARTICLE 52. ASSIGNMENT OF MONIES OWED

- 52.1 Monies owed, or which become owed, to the Contractor under the Agreement may only be assigned to a bank, trust company, or other financing institution, including any federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Written notice of such an assignment or reassignment must be provided, however, to the County by certified mail within ten (10) days of the assignment or reassignment. Any such assignment or reassignment shall cover all amounts payable under the Contract Documents, but not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing.

ARTICLE 53. QUALITY ASSURANCE

- 53.1 The Contractor shall utilize a Quality Assurance Plan (QAP) to oversee the work of the Contract and to ensure that the TOSRP is designed, procured, and manufactured/constructed in accordance with established design, engineering and quality requirements. These requirements provide the controls for design, procurement, installation, inspection and testing, which will enable MDC to be assured that the quality necessary for safe, secure and reliable operation of the TOSRP is achieved. The Quality Assurance Plan (QAP) shall ensure compliance with the requirements of the Contract Documents within the Contractor, Subcontractor's and Supplier's organizations. The Contractor shall create and implement a Quality Assurance Plan (QAP) for the County's TOSRP project. The QAP shall include all those planned and systematic actions and/or activities necessary to provide the County with a high level of confidence that the product(s) or services to be provided are of the highest quality throughout, and shall satisfy all areas of the contract. The QAP shall include the quality elements described in the FTA Quality Assurance/Quality Control (QA/QC) Guidelines (FTA-IT-90-5001-02.1) as revised, or the ISO 9001-2008 Standard. The Contractor's Quality Assurance Plan (QAP) shall include processes and methods to ensure compliance with the requirements of the Contract Documents within the Contractor, subcontractor's and supplier's organizations.

53.2 QUALITY ASSURANCE PLAN (QAP)

The Contractor, within fourteen (14) days from the issuance of Notice to Proceed (NTP), shall submit to the County a Quality Assurance Plan for the Project. This plan must include the processes and controls to be used for assuring the quality of design, production and installation. The Contractor shall submit to MDT, Quality Assurance Division, prior to commencement of work, three (3) copies of its complete TOSRP QAP for review and approval, or assume the sole risk and expense of costs associated with repairs and/or re-installations due to contract work performed.



The Contractor shall maintain the QAP with the following requirements:

The QAP shall align with the FTA QA/QC Guidelines Elements as a minimum, including the following;

- i. A written quality policy,
- ii. Written procedures (test and inspection),
- iii. A written statement by a duly authorized officer (executive level), stating the unyielding commitment of, and support by, the Company's principals and contract management personnel to the highest standards of quality through the implementation of the contract-specific QAP activities.
- iv. The QAP shall be updated and submitted by the Contractor as necessary throughout the duration of the contract.

Within fourteen (14) days after submitting the QAP, and prior to the commencing work, the Contractor shall meet with MDT to discuss the Quality Assurance Plan, in order to obtain a mutual understanding of the Program Plan and the MDT Quality Program to include, minimally, the following topics:

1. Control activities
2. Role of MDC
3. Role of Contractor's QA Representative
4. MDC administration and QA audits (Contractor and sub-contractors)
5. MDC/Contractor roles and responsibilities for testing, inspection, auditing and monitoring
6. Forms and documentation for recording activities
7. Lines of communication and notification responsibilities

The Contractor's Quality Assurance Plan and associated activities shall be subject to MDC's verification at any time. Verification may include, but will not be limited to the following:

1. Surveillance of the operations
2. Auditing of contractors, subcontractors and vendors
3. Inspection to measure quality of the items to ensure compliance with all requirements; and
4. Review of Quality Records.

Contents of QAP: The QAP shall describe in detail all elements of the QA System, the Contractor proposes to implement for the TOSRP project. These elements shall be considered in the development of detailed quality procedures. The quality elements at minimum to be addressed in this plan are as follows:

- i. Organization: A functional organization chart showing the interrelationships between the Contractor and subcontractors, and other supporting organizations. The contractor shall designate a Quality Assurance Representative (QAR) experienced in the quality requirements of the Contract. Based on the functional organization chart, the organization structure, levels of authority, and lines of communication for activities affecting quality, shall be clearly established and delineated. Quality Assurance personnel shall have the authority and responsibility to evaluate and assure that the QA system is correctly and



effectively executed and verified. Where problems are identified, QA personnel shall have the authority and responsibility to evaluate and assure that the QA System is correctly and effectively executed and verified. QA personnel shall have the authority and organizational freedom to initiate, recommend and provide solutions. The QAR shall not be replaced by the Contractor without prior written approval of MDC.

- ii. **Quality Assurance System:** The QA system shall include those processes necessary to address key activities affecting quality; provide control over activities affecting quality consistent with their importance; provide for the planning and accomplishment of activities affecting quality under suitably controlled conditions. Controlled conditions shall include the use of appropriate equipment, suitable environmental conditions for accomplishing the activity, and assurance that the prerequisites for any given activities have been satisfied; provide for any special controls, processes, test equipment, tools and skills to attain required quality and for necessary verification of quality such as inspection or test; provide orientation and training, as necessary, of personnel performing activities affecting quality to assure that suitable proficiency is achieved and maintained; and require management to regularly assess the adequacy of the QA system and assure its effective implementation.
- iii. **Design Control:** The QA system shall include design control measures to assure that design specifications, regulatory and code requirements, and engineering standards are correctly applied to drawings, specifications, procedures, and instructions; that appropriate quality standards are specified in the design documents; that selection and review of materials and processes essential to installation are suitable for their application; that design review/checking, and certification by licensed professional engineers are performed; and distribution of all design documents.
- iv. **Procurement Control:** The QA system shall include a procurement control process to assure that design, engineering and services, along with materials, machinery and equipment are procured in accordance with the contract requirements. Procurement documents are to be prepared in detail to include and be reviewed for technical, quality and commercial requirements for all materials, products and services, to meet strict requirements to ensure that those documents requiring regulatory or professional approval are submitted in a thorough format and timely manner for approval as required. Refer to Articles 73 and 76 for additional requirements.
- v. **Instructions, Procedures and Drawings:** Instructions, procedures and drawings shall also prescribe quantitative and qualitative acceptance criteria.
- vi. **Document and Data Control:** The QA system shall describe the procedures for issuance, approval, distribution, retention, and maintenance detail of drawings, specifications, reports, procedures, and other quality related documents applicable to the design and construction of the projects. All documents that specify quality requirements or prescribed activities affecting quality shall be controlled to assure that the correct documents are being employed. Refer to Article 80 for additional requirements.
- vii. **Control of Purchased Materials, Equipment, and Services:** This QA element is required to assure that purchased materials, equipment, and services are delivered/ performed by contractors, and suppliers in conformance with the



requirements stipulated in the contract documents; and are identified and verifiable to the documents submitted. Refer to Article 98 for additional requirements.

- viii. Identification and Control of Materials, Parts and Components: The QA system shall include this element to assure that all materials, parts, and components are properly identified and controlled; identification is maintained by part number, serial number or other appropriate means either on the item or on the records that are traceable to the item as required throughout fabrication or construction of the item; and nonconforming work, materials, parts or components are prevented from being incorporated into the final product.
- ix. Control of Special Processes: The QA system shall include this element to assure that special processes, including but not limited to welding, heat treating, non-destructive testing, are properly controlled and performed by qualified personnel using approved procedures in accordance with the applicable codes and engineering standards under suitable conditions.
- x. Inspection: The QA system shall include inspection during all phases to assure that requirements of contract documents (e.g. drawings, specifications, instructions, regulatory requirements, applicable codes and standards, etc.) are being complied with by the consultants, contractors, and suppliers. Refer to Article 57 for additional requirements.
- xi. Test Control: The QA System shall include the element of test control to assure that all testing required to demonstrate that the equipment and systems will perform satisfactorily and are done in accordance with approved procedures; test procedures shall include all prerequisite requirements and acceptance criteria specified in the contract documents; and test results are evaluated by responsible and competent persons. Refer to Article 49 for additional requirements.
- xii. Inspection, Test, and Operating Status: The QA System shall include inspection, test and operating status information to demonstrate (provide evidence) that all manufactured or fabricated equipment, components, or systems have satisfactorily passed all required inspection, examination and testing. Refer to Articles 49 and 97 for additional requirements.
- xiii. Nonconforming Parts, Materials, and Components: The QA System shall assure that nonconforming parts, materials and components are prevented from being incorporated/introduced in all manufacturing tasks and/or into the final product; are properly identified and segregated from conforming items while awaiting disposition; and are reported for immediate disposition of nonconformance. Refer to Article 73 for additional requirements.
- xiv. Corrective and Preventive Action: The QA System shall include corrective action processes to assure that conditions which are adverse to quality are promptly identified and corrected; to determine the cause of nonconformance and take corrective measures to prevent recurrence; to document and report to appropriate management all records and procedures used in correcting the condition of nonconformance; and to assure that corrective actions resulting from the audits are properly corrected and immediately responded to.



- xv. Quality Assurance Records: The QA System shall include procedures to assure that all QA related documents and supporting evidence are properly accumulated, maintained, organized and protected; and that all documents are properly identified, controlled, and stored in a well-defined location. These records shall be available for review. Records are considered one of the principle forms of objective evidence that applicable quality system elements have been implemented. Refer to Articles 16 and 88 for additional requirements.

- xvi. Audits: The QA System shall include audits to verify implementation and compliance with all aspects of the QA System and to determine the effectiveness of the system; assure that audits are performed in accordance with a written checklist by qualified personnel; assure that all audit results are documented and reviewed by management responsible for the area being audited; and assure that follow-up actions and actual verification, including re-audit of deficient areas are performed. The Contractor's Audit program shall include auditing of the subcontractors, sub-consultants and supplier organizations to verify that the quality systems are compliant with contract quality requirements and the organizations' quality plan. Refer to Article 17 for additional requirements.

- xvii. Servicing: The QA System shall include documented procedures for performing, verifying, and reporting that the servicing meets the specified requirements.

- xviii. Software Quality Assurance and Documentation: The Contractor shall submit for approval, a Software Quality Assurance Plan, SQAP (in accordance with ANSI/IEEE Standard 730-2002 or ISO 9001-2008 requirements). For reference, this Standard has the following minimum software documentation requirements:

- Software Requirements Specification (Ref. Exhibit 1 - Scope of Services)
- Software Design Description
- Software Verification and Validation Plan
- Software Verification and Validation Report
- User Documentation
- Training Documentation

The Software Design Description (SDD) shall be in accordance with ANSI/IEEE Standard 1016-1998 or ISO 9001 requirements. The final Software Design Description shall include details required by ATA Specification No. 102, through all levels to Level 6 or ISO 9001 requirements. The levels defined in ATA No. 102 are summarized below only for information:

- Level 1. Computer description and operation
- Level 2. Software architecture, basic program and functions.
- Level 3. Detailed flow information.
- Level 4. Annotated compiler/assembly listing
- Level 5. Detailed memory map and listing
- Level 6. Input/output port map

At its option, MDC will participate in both the Software Requirements and the Preliminary Design Review, as defined by the ANSI/IEEE Standard 730-2002 or in accordance with the Contractor's ISO 9001-2008 quality procedures. Following



these reviews, the Contractor shall submit, for approval, the Preliminary Design Review Report. All subsequent changes to these reports shall also be submitted and approved prior to implementation.

ARTICLE 54. EXTENSION OF TIME

- 54.1 In the event the Contractor is delayed, at any time, to affect a schedule or required performance of Work, the Contractor shall provide a written notice to the County at the time, in advance of a delay, that the Contractor knows of any cause which might result in a delay. Additionally, the Contractor shall proceed continuously and diligently with the performance of the unaffected portions of the Work.
- 54.2 The Contractor shall, at minimum, specifically state in such notice:
 - a. That an extension of time is or may be requested.
 - b. Identify and describe the cause(s) and nature of the delay.
 - c. The portions of Work affected by the delay.
 - d. The effect the delay has on the completion of the affected portions of the Work.
 - e. The effect of an extension of time that may provide minimum or no impact to the overall schedule or the further performance of the Work required under this Contract.
- 54.3 The County may require the Contractor to furnish such additional information or documentation, as the County deems reasonably necessary or helpful in considering an extension of time. Once the County has received the Contractor's notice, information, and documentation and has evaluated the matter, the County will advise the Contractor of its decision on such extension of time.
- 54.4 The County will reasonably exercise its discretion to amend any schedule or time requirement for performance of Work in consideration of the following conditions:
 - a. If the cause of the delay is beyond the Contractor's control and arises without its fault or negligence, and neither was nor could have been anticipated by the Contractor by reasonable investigation.
 - b. If the completion of the Work will be actually and necessarily delayed by the cause(s) set forth in "a" above.
 - c. If the effect of such cause(s) 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.
 - d. If the Contractor has provided the aforementioned notice, information, or documentation as stipulated.
- 54.5 The County reserves the right to rescind or shorten any extension of time 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.
- 54.6 The Contractor shall proceed with the performance of any Work subsequent to any missed schedule or specified timeframe whether the County's decision to amend said



time requirement is pending or denied. Such performance of Work shall not affect any discount provisions or waive the County's right to exercise any default provisions of this Contract.

ARTICLE 55. NO DAMAGES FOR DELAY

55.1 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 Article 54 "Extension of Time ".

ARTICLE 56. LIQUIDATED DAMAGES

56.1 In the event the TOSRP equipment, materials, or work specified in Article 56.2 is not completed and/or delivered to the County, and/or the Work or a portion thereof is not completed within the number of days or weeks set forth herein, and/or within the County approved Project Schedule, damage will be sustained by the County. In such event, the Contractor shall pay to the County, as liquidated damages and not as a penalty, the sums set forth below for every day or fraction thereof of delay in completing the referenced portion of the Work and failing to meet the corresponding interim milestone or the Time of Completion. The Contractor shall pay the referenced sums as fixed and agreed to, liquidated damages, and not by way of a penalty, to the County. Subject to the Articles 56.3, 56.4, and 56.5 herein, the County may deduct the sum of liquidated damages from any monies due or that become due the Contractor under the Agreement or under any other contract with the County, or if such monies are insufficient, the Contractor shall pay to the County any deficiencies in such monies within thirty (30) days of written notice by the County. The remedies provided herein are not intended to preclude the County from terminating this Agreement as provided in the termination provisions herein. Failure by the Contractor to complete any phase as provided for by the Project Schedule shall result in liquidated damages in the amount specified below.

56.2 LIQUIDATED DAMAGES TABLE

Liquidated Damages	Scheduled Days After NTP	Amount Per Day
Completion of Preliminary Design Review	Pursuant to Exhibit 5 - Project Schedule	\$1,175
Software Delivery and Installation	Pursuant to Exhibit 5 - Project Schedule	\$1,175
Hardware Delivery and Installation	Pursuant to Exhibit 5 - Project Schedule	\$1,175
Completion of Training	Pursuant to Exhibit 5 - Project Schedule	\$1,175
Completion of Parallel Testing	Pursuant to Exhibit 5- Project Schedule	\$1,175

56.3 Prior to claiming Liquidated Damages, the County must notify the Contractor by written notice within thirty (30) business days of its intent to claim Liquidated Damages. Within thirty (30) business days of the issuance of such written notice, the Contractor shall resolve the issue within a mutually agreed upon time by the parties, and submit a revised Implementation Schedule that reflects the delay in the project schedule. The Contractor shall have this right one time. Thereafter, Liquidated Damages shall apply in



accordance with the schedule above.

- 56.4 Any final payment (or offset) of liquidated damages by the County, upon request by either party, may be made subject to the dispute resolution procedure set out in Article 69.
- 56.5 If the Contractor's delay or failure is caused in whole or in part by a delay or failure to perform by the County or its contractors, then the Contractor shall request an Extension of Time in accordance with the terms of this Agreement, to re-negotiate the Implementation Schedule. Notwithstanding anything to the contrary, no liquidated damages may be assessed in these circumstances until the revised Implementation Schedule is agreed to in writing by both parties.
- 56.6 In no event will the total liquidated damages paid by the Contractor to the County pursuant to Article 94 – "Notice to Proceed" exceed ten percent (10%) of the Contract Sum, as it may have been changed from time to time in accordance with the Contract Documents.

ARTICLE 57. INSPECTION

- 57.1 The County shall at all times, have the right to inspect, and shall have access to, the Work and any portion thereof and the Contractor shall furnish every reasonable facility for ascertaining that the Work is performed in accordance with the requirements of the Contract Documents. The Work and any portion thereof shall be subject to the County's or the County's on-site and off-site inspection.
- 57.2 Inspection or lack of inspection, approval or acceptance of any portion of the Work shall not relieve or release the Contractor from its obligations to adhere to, and fulfill the requirements of, the Contract Documents, including, but not limited to, the Contractor's warranty obligations. Work not meeting the requirements of the Contract Documents shall be made acceptable to the County. Any non-conforming portion of the Work may be rejected by the County, notwithstanding that such portion of the Work may have been previously inspected, approved, or accepted or that payment therefore may have been included in a prior pay estimate.
- 57.3 Re-inspection of any portion of the Work that is reasonably necessary may be ordered by the County at any time before issuance of the Acceptance Certificate. If such portion of the Work is found to be in accordance with the Contract Documents, the County will pay all costs incurred to perform this inspection. If such portion of the Work is not in accordance with the Contract Documents, Contractor shall pay all costs incurred to perform this inspection.
- 57.4 The Contractor shall provide for the inspection of all incoming systems, subsystems, components, parts, equipment and other materials to insure their correctness and condition. The County shall be given notice of, and shall have the right to observe, such inspections. Items being inspected shall be identified with corresponding drawing, specification, or other pertinent technical documents. All material certifications and test reports used as the basis for acceptance shall be retained by the Contractor.
- 57.5 The Contractor shall assure that all manufacturing processes, fabrication, rehabilitation and other production operations are accomplished under an effective production control system. In-process inspection shall be used to monitor the production control system.



The County shall be given notice of, and shall have the right to observe, such inspections. The Contractor shall maintain a system for identifying the progressive inspection status of materials, components, subassemblies and assemblies, so that such status is known throughout the manufacturing, installation, rehabilitation and testing phases. The Contractor's inspection program shall also provide for surveillance to ensure proper handling, storage, preserving, packaging and marking of items during the production process.

- 57.6 The Contractor shall monitor Subcontractor's inspection programs to ensure that services and materials being supplied conform to Contract Documents.
- 57.7 The Contractor shall provide and maintain an inspection program acceptable to the County as specified in Exhibit 1 - Scope of Services herein. Records of all inspection work by the Contractor shall be kept complete and available to the County and the County during the performance of the Agreement, and for a period of five (5) years after the issuance of the Acceptance Certificate. Prior to the issuance of the Certificate of Acceptance of Final Inspection and after the Certificate of Acceptance of the TOSRP, all sign-off, inspection and test records, changes, reports, orders, modifications and quality assurance data for the TOSRP shall be provided to the County.

ARTICLE 58. FORCE MAJEURE

- 58.1 Except as otherwise expressly provided herein, neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that such performance is prevented or delayed by any cause, existing or future, which is not within the reasonable control of such party including, but not limited to, acts of God or the public enemy, fires, explosions, riots, strikes (not including strikes of the Contractor's staff personnel), terrorism or war. Notwithstanding the foregoing, the failures of any of the Contractor's suppliers, subcontractors, or the like shall not excuse the Contractor's performance except to the extent those failures are due to any cause without the fault and reasonable control of such suppliers, subcontractors, or the like.
- 58.2 In the event that such failure or delay occurs, the affected party shall notify the other party of the occurrence thereof as soon as possible and the parties shall discuss the best way to resolve the event of force majeure.

ARTICLE 59. HARDWARE

- 59.1 All Hardware shall be manufactured, fabricated, assembled, finished, and documented with quality production workmanship and shall conform to all applicable quality standards of the original manufacturer. All Hardware components shall be new and suitable for the purposes of its intended use. All Hardware provided shall be commercially available, standard, off-the-shelf products manufactured by well-established and reputable manufacturers.
- 59.2 Modern Original Equipment Manufacture (OEM) Products: The Contractor shall supply modern, OEM products of computer and communication hardware required for the Transit Operations System Replacement Project (TOSRP). All OEM products utilized shall be from authorized distributors. Evidence that products were obtained by the Contractor from authorized distributors shall be provided to the County upon request.



- 59.3 All Hardware shall contain the latest firmware, patches, and software updates available at the time of delivery.
- 59.4 Manuals and other descriptive material shall be available for all Hardware provided by the Contractor, regardless of whether it is manufactured by the Contractor or other. This documentation shall include descriptions, specifications, and theory of operation.
- 59.5 Instructions shall be available for preventive maintenance procedures that include examinations, tests, adjustments, and periodic cleaning. The manuals shall provide guidelines for isolating the causes of Hardware malfunctions.
- 59.6 All such Hardware documentation shall be provided by the Contractor to the County, at no cost, with the Contractor's request to the County for the Final Acceptance Certificate.
- 59.7 Additional Hardware:
- A) The County may purchase, via written order, additional Hardware on an as needed basis, in any lot amount. Such additional Hardware shall be delivered within 30 days from the date of the order, unless otherwise specified.
 - B) The County may consider an adjustment to the prices stated on the Price Schedule for additional Hardware each two-year period following issuance of the Final Acceptance Certificate, upon receipt of a request from the Contractor for a price adjustment at least sixty (60) days prior to the end of the period. The County may request relevant documentation for the requested adjustment. Each adjustment shall not exceed 3% of the current price.
 - C) The Contractor may substitute Hardware stated in the Contract Documents upon written consent from the County and subject to availability. Any substitute Hardware shall be equivalent in quality and shall not affect any essential functions, characteristics, or warranty of the System. However, if Hardware is substituted, the County may be subject to additional costs. The Contractor shall provide the County any such relevant and available documentation, at no charge, to evaluate consent of a substitute Hardware.

ARTICLE 60. SCOPE OF SERVICES

- 60.1 The Contractor shall furnish all labor, materials, tools, equipment, transportation and supervision to furnish, and perform all installation, testing, training, repairs, technical support and other services necessary and incidental to the proper, timely and satisfactory completion of the Work in accordance with Exhibit 1 - Scope of Services, and to do all other tasks required by the Contract Documents.
- 60.2 The intent of the Contract Documents is to provide the County with a TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP) as required by the Contract Documents, ready for operation by the County, as well as the satisfactory completion of all other portions of the Work.
- 60.3 The Contractor shall carefully examine and become familiar with the CONTRACT, the Contract Documents, the County's facilities, and any other conditions or facilities potentially affecting the Work. By submitting a Proposal, the Proposer acknowledges



that it has carefully examined the CONTRACT, the Contract Documents, and the County's facilities, and has satisfied itself as to the contractual and technical requirements of the Work and all conditions potentially affecting the Work. Any failure by the Contractor to carefully and completely review the CONTRACT, the Contract Documents, the County's facilities, and any other conditions or facilities potentially affecting the Work, or to acquaint itself with all available information, shall not relieve it from the responsibility for estimating properly the difficulty or cost of successfully performing the Work. The County assumes no responsibility for any conclusions or interpretations made by the Proposer on the basis of any representations made, or information provided by, the County, the County or any of the County's or the County's directors, officers, employees or agents prior to the execution of the Agreement. Such data is included or provided only for the convenience of each Proposer.

ARTICLE 61. INTENT OF CONTRACT DOCUMENTS

- 61.1 The Contract Documents describe the Work. Where the Contract Documents describe portions of the Work in general terms, but not in complete detail, generally accepted industry practice shall be followed. Only new materials and workmanship of the highest quality shall be used.
- 61.2 The Contractor shall check all furnished Contract Documents immediately upon receipt and shall immediately notify the County of any discrepancies therein.
- 61.3 Anything mentioned in Exhibit 1 - Scope of Services and not shown on any County provided drawings, or shown on the said drawings and not mentioned in Exhibit 1 - Scope of Services, shall be treated as if shown or mentioned in both. In case of a discrepancy in the figures or information mentioned in either the Drawings or Exhibit 1 - Scope of Services, the Contractor shall promptly submit the matter to the County's Project Manager, who will provide a written decision to the Contractor to resolve the discrepancy.

ARTICLE 62. USE AND POSSESSION PRIOR TO COMPLETION

- 62.1 The County has the right to take possession as it relates to hardware or equipment or use of any completed portion or partially completed portion of the Work. Such possession or use shall not be deemed as acceptance of the Work or any portion thereof, unless otherwise accepted by the County and issuance of a Certificate of Acceptance. While the County is in possession of such portion of the Work, the Contractor shall be relieved of the responsibility for loss or damage to only that portion of the Work, except for loss or damage resulting from the Contractor's, Subcontractor's or Supplier's fault or negligence. The Contractor shall, however, remain responsible for completion of such portion of the Work in accordance with Contract Documents.
- 62.2 Notwithstanding use by the County of any completed portion or partially completed portion of the Work, the applicable time period for the Contractor's guarantee and warranties shall not commence until issuance of the Certificate of Acceptance of Final Inspection.

ARTICLE 63. OTHER CONTRACTS



- 63.1 The County may undertake or award contracts associated with this Agreement to others for additional work, and the Contractor shall fully cooperate with such other contractors and the County in the performance and scheduling of such additional work and vice versa. The Contractor shall not interfere with, hinder or delay the performance of Work by other contractors or the County.
- 63.2 The Contractor shall provide to the County all necessary drawings, dimensions, data and other information necessary to ensure the complete, integrated and proper design, manufacture, installation and operation of interfacing and connecting parts and systems as may be required by any contractor performing work under or pursuant to another County contract that interfaces with any portion of the Work. The exchange of information will be coordinated by the County, subject to the appropriate Non-Disclosure Agreements being in place with the contractor requesting said information, and one (1) hardcopy and three (3) electronic copies of all the Contractor's data, drawings and correspondence relating to the above shall be furnished to the County.
- 63.3 Contractor, if it deems certain documentation to be proprietary and/or exempt from Florida's Public Records Law, must, at the time of document(s) delivery, if it wishes not to have said documentation publicly disclosed, identify as "proprietary" on the upper right hand corner of each page of said document(s) it maintains are proprietary. In the event the County receives a public records request for said document(s), the County will endeavor to notify the Contractor of the request and provide a reasonable opportunity for the Contractor to obtain a court order to prohibit the release of said documents(s). The Contractor shall bear all responsibility and costs, including attorney's fees, for any court action arising out of Contractor's identification of document(s) as proprietary. Notwithstanding the above, in no case will any action taken by the County, believed to be in good faith required by, or consistent with, the public records laws, constitute a violation of this agreement.
- 63.4 The County shall timely notify the Contractor if there are any other contracts or subcontractors with which the Contractor will need to coordinate with the County.

ARTICLE 64. INDEPENDENT CONTRACTOR

- 64.1 The Contractor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which it performs the Work required under the terms of the Contract Documents. The Contractor shall be liable for its own acts and omissions as well as those of its employees, agents, Subcontractors and Suppliers. Nothing contained herein shall be construed as creating an employment or agency relationship between the County and the Contractor, its employees, agents, Subcontractors and Suppliers.

ARTICLE 65. PROJECT SCHEDULE

- 65.1 See Exhibit 5 – Project Schedule
- 65.2 (A) Five (5) reproducible copies of the Project Schedule and each update thereto shall be submitted to the County.

(B) Project Schedule sheets shall not be larger than twenty-two inches (22") by thirty-four inches (34").



(C) Approval of the Project Schedule, or any updates thereto, by the County, shall, in no way, waive any requirements of the Contract Documents nor excuse the Contractor from any obligations under the Contract Documents. Upon approval by the County in writing, the approved Project Schedule shall then be the schedule to be used by the Contractor for planning, organizing, and directing the Work and reporting progress.

(D) The Contractor shall submit for the County's approval an updated Project Schedule by the tenth (10th) day of each month the Work is being performed. The updated Project Schedule shall show progress during the preceding month, including actual start and finish dates for each activity.

(E) Failure of the Contractor to submit the Project Schedule or updates thereto, within the time limits specified, shall be sufficient cause for the County to withhold the Contractor's progress payments, or any portion thereof, until such delinquent submittal is made.

(F) The Contractor shall prosecute the Work in accordance with the latest approved Project Schedule. Deviations shall be submitted to the County for review and written approval. In the event that the progress of items along the critical path is delayed, the Contractor shall revise its planning as necessary to meet the Time of Completion.

(G) For changes to the Contract Documents which could influence the order of all of or portions of the Work, restraints between various activities, or duration time estimated for activities on the Project Schedule, a determination of the impact of such changes on any interim milestone dates or the Time of Completion shall be made in accordance with the Contract Documents.

(H) If a Change Order is issued, the Project Schedule shall be changed, if necessary, to reflect the requirements of the Change Order. Changes to the Project Schedule shall be made no later than the next updating after the issuance of the Change Order.

(I) If the Contractor fails or refuses to submit or include the foregoing revisions within fifteen (15) days after the date of change, the County will furnish to the Contractor, at the Contractor's expense, the logic, duration time changes, or both, to be entered into the Project Schedule and used in subsequent updating of reports until such time that the change has been settled or until actual dates supersede the estimated dates. Inclusion of a revision in the Project Schedule and use of revised logic or duration time, or both, whether furnished by the Contractor or by the County, will not be construed as an extension of time to the Time of Completion or as a deviation from any other requirements of the Contract Documents.

ARTICLE 66. PROGRESS REPORTS

66.1 The Contractor shall submit Progress Reports every calendar month during the performance of the Work in accordance with a format approved by the County which shall provide detailed information for the preceding calendar month on the following items, as applicable:

(A) The activities started during the report period and to be started in the next report period;



- (B) The activities completed during the report period and those to be completed in the next report period;
- (C) Project Schedule deviations and slippage with explanations, a description of their effects on the Work, and plans for correction;
- (D) Major problems;
- (E) Pending action items requested by the Contractor or the County;
- (F) Subcontractor and Supplier status reports;
- (G) Log of correspondence for the report period;
- (H) As-built drawings for completed portions of the Work; and
- (I) Production Status Report detailing the level of completion for each major module.

66.2 Progress Reports shall be submitted by the tenth (10th) day of the month following the reporting period in electronic format.

ARTICLE 67. CHANGES

67.1 The County may, at any time, without invalidating the Agreement by a written Change Order, order modifications in the Work and/or the Contract Documents, including changes, modifications, additions or deletions. Where additional work may be required, the County will issue a Change Order under the terms and conditions of the Contract.

67.2 The Contractor may, at any time, submit in writing to the County proposed modifications to the Work. The County will review such proposals and recommend the approval or denial of such proposed modifications to the County, and the County, at its sole discretion, may either approve or deny such proposed modifications.

67.3 Upon accepting modifications proposed by the Contractor, the County will execute and issue a Change Order. The denial by the County of the Contractor's proposed modification shall neither provide the Contractor with any basis for a claim for damages nor an adjustment of the Time of Completion, nor shall the denial release the Contractor from its contractual responsibilities under the Contract Documents.

67.4 Except as herein provided, no order, statement or conduct of the County shall be treated as a Change Order or entitle the Contractor to additional compensation or an equitable adjustment hereunder.

67.5 If any Change Order causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work, an equitable adjustment will be made and the Agreement will be accordingly modified in writing.

67.6 Within ten (10) days or a mutually agreed upon timeframe of receiving a request from the County or upon submission of a proposed modification Article 67 subsection 67.2, the Contractor shall submit, with each change, modification, addition or deletion, involving an increase or decrease in the cost of or time to perform the Work, an itemized cost breakdown covering any Subcontractor's work as well as its own. The Contractor shall also indicate proposed payment terms and any increase or decrease in the Time of Completion as a result of the proposed modification. The itemized breakdown shall include the following:

- (A) Material quantities and unit prices
- (B) Hourly rates for implementing the change



(C) Equipment costs

The Contractor shall also include, as part of its submission, a subnet schedule showing a complete breakdown of all of the tasks required to complete the proposed modification, including the impact of the modification on the Project Schedule. This subnet schedule shall be in the same format as, and fully integrated into, the Project Schedule.

67.7 Adjustments in the Contract Sum resulting from a change, modification, addition or deletion in the Work shall be determined by one or more of the following:

- (A) By agreement;
- (B) By unit price adjustment; or
- (C) By the County on the basis of the County's estimate of an equitable increase or decrease in the Contract Sum.

If adjustments in the Contract Sum are implemented through Article 67 section 67.7 (C), the Contractor, if not in agreement, may pursue the Dispute Resolution Procedures in accordance with Article 69 – Claims and Disputes.

67.8 No allowance shall be made or recovery be allowed to the Contractor for loss of anticipated profit or overhead recovery as a result of a portion of the Work not being performed by reason of a change, modification, addition or deletion in the Work.

67.9 Adjustments in the Time of Completion of the Contract shall only be allowed if the Work included in the change, modification, addition or deletion falls on the critical path of the Project Schedule or alters such critical path so as to extend the time required for completion of the Work. The critical path will be determined from the latest approved version of the Contract Project Schedule.

67.10 MDC shall have the right at any time during the progress of the Work to increase or decrease the Work. Promptly after being notified of a change, Contractor shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Except in an emergency endangering life or property, or for minor changes ordered by the County's Project Manager, no addition or changes to the Work shall be made except upon written order of MDC, and MDC shall not be liable to Contractor for any increased compensation or adjustment to the Contract Time without such written order. No officer, employee or agent of MDC is authorized to orally direct any increase or decrease in the Work.

67.11 The Contractor's written acceptance of a Change Order, absent a written reservation of rights, shall constitute the Contractor's final and binding agreement to the provisions thereof and a waiver by the Contractor of any direct claims, resulting there-from. Disagreement with a Change Order shall in no way excuse the Contractor from complying with, and prosecuting, the work set forth in the Change Order. Should the Contractor disagree with any Change Order, it shall, within ten (10) calendar days after receipt of the Change Order, submit to the County a written statement specifically setting forth the nature and monetary extent of such disagreement. No such claim by the Contractor shall be considered if it is asserted after the earlier of ten (10) calendar days of Contractor's receipt of the Change Order.



ARTICLE 68. INTENTIONALLY OMITTED.

ARTICLE 69. CLAIMS AND DISPUTES

All actions, claims and disputes arising out of, under, or related to, the Agreement, the Contract Documents or for a breach thereof, except as provided in or limited by Article 67 section 67.11 (written acceptance of a Change Order), Article 69 section 69.1 (condition precedent); Article 69 section 69.3 (limitation on commencement), Article 69 section 69.5 (ninety day period) and Article 104 section 104.3 (waiver by final payment), shall only be commenced in a court of competent jurisdiction in Miami, Miami-Dade County, Florida and the Contractor hereby consents and submits to the jurisdiction of such court.

69.1 As an express condition precedent to the Contractor's right to commence a court proceeding, as set forth in Article 69.2, the Contractor shall provide to the County's Project Manager:

- (A) A written claim which shall set forth, in detail, the amount of additional compensation or time claimed and the basis for the claim and the amount claimed;
- (B) All materials utilized by the Contractor in preparation of its claim, including, but not limited to, all worksheets, quotations, calculations, pricing data, estimates and correspondence relating thereto;
- (C) Written evidence of, and support for, any claim, including evidence regarding liability, causation and damages, sufficient to enable the County's Project Manager to render a decision with respect to such claim; and
- (D) Such other information as the County's Project Manager may reasonably request.

Within thirty (30) days of the Contractor's first knowledge of an event giving rise to a claim, the Contractor shall provide written notice to Miami-Dade County of its intent to file a claim. The Contractor shall present such claim and supporting information and evidence to the County within thirty (30) days of its notice to the County, or within such longer period of time as the County and the Contractor may mutually agree. Within sixty (60) days of receiving all such information and evidence, the County will render a written decision with respect to the claim.

In the event the CONTRACTOR and County's Project Manager are unable to resolve their differences concerning any determination made by the County's Project Manager or any dispute or claim arising under or relating to the Contract, either the CONTRACTOR or COUNTY may initiate a dispute in accordance with the procedure set forth in this Article. Exhaustion of these procedures shall be a precondition to any lawsuit permitted hereunder.

The parties to this contract hereby authorize the use of a mutually agreed upon arbitrator to assist in resolving any dispute. Such arbitration shall be in accordance with the provisions of Article 69.2.

69.2 Resolution of Potential Claims:



This project is funded by the American Recovery & Reinvestment Act (ARRA)

MDC will give a formal response to a notice of potential claim within the following time limits after all data requested by MDC or MDC's Representative have been provided: a response to potential claims under \$50,000 will be given within forty-five (45) Days; a response to potential claims from \$50,000 through \$200,000 will be given within sixty (60) Days; and a response to potential claims over \$200,000 will be given within ninety (90) Days. These time limits may be extended if more time is required by the County to respond. If MDC fails or refuses to act on a potential claim within such time, the potential claim will be deemed to have been rejected by MDC on the last day of the period within which MDC was required to act upon the potential claim, and the Contractor may proceed as though the potential claim had not been resolved.

Mediation: Within fifteen (15) Days after receipt of MDC's response, or within fifteen (15) Days after the applicable time limit for MDC's response set forth herein, whichever is earlier, the Contractor may file a written objection with MDC's Representative, stating clearly and in detail the basis for its objection to MDC's response. Within fifteen (15) Days of receipt of the Contractor's objection, the Contractor or MDC may make request for mediation of the potential claim in accordance with the following procedure:

Notice of Mediation: Either MDC or the Contractor may submit any remaining dispute to Mediation by serving a written notice of Nonbinding Arbitration ("Mediation") on the other party. The Notice of Mediation shall be signed, on behalf of MDC, by MDC's Representative; and, on behalf of the Contractor, by an individual having authority as its representative. Mediation shall proceed in accordance with rules promulgated by the Mediator and shall be concluded within thirty (30) Days, unless extended by mutual agreement of the parties. MDC will be represented by MDC's Representative(s) or such other higher-level representative of its choosing, and the Contractor shall be represented by an individual(s) having authority as its representative.

Selection of Mediator: Within fifteen (15) Days of the Notice of Mediation referred to herein, the parties shall meet and select a disinterested third person to act as Mediator ("Mediator"). If the parties fail to agree, either party may request the American Mediation Association in Miami to appoint the Mediator. The Mediator shall be replaced within fifteen (15) Days of receipt of a written request of either party, using the procedure outlined above; provided, however, that either party may only replace the Mediator once.

Cost of Mediator: The County's Representative shall provide to the Mediator, at no cost to the Contractor, administrative services such as conference facilities and secretarial services, excluding transcription services, which will be borne equally by both parties. Fees and expenses of the Mediator shall be borne equally by the parties.

Change Order: If the County and the Contractor are able to resolve their dispute through Mediation, the County shall promptly process any appropriate Contract Change Order.

Filing of Claim: If the potential claim has not been resolved to the satisfaction of either party by the above procedures, either party may present the Claim to the County Mayor for resolution. The parties hereto further agree that, upon timely request under this Section, both the Contractor and County are entitled to a hearing before the County Mayor, or his designee, at which both Contractor and the County may present evidence and live testimony, in accordance with the Florida Rules of Evidence, and the right to cross-examine each other's witnesses.



Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the directions of the County's Project Manager.

- 69.3 No court proceeding arising from any such claim, dispute, or other matter shall or may be commenced by the Contractor until the earlier of:
- (A) The date on which the Miami-Dade County Mayor, or his designee, has rendered his written decision provided for in Article 69.2; or
 - (B) The ninetieth (90th) day after the Contractor has provided Miami-Dade County with all the materials and evidence required by Article 69.1, if the County Mayor has not rendered his written decision by that date.

Failure by the Contractor to provide notice of intent to commence a court proceeding within said thirty (30) days of the County Mayor, or designee's written decision, shall result in Miami-Dade County's decision becoming final and binding upon the Contractor.

- 69.4 Unless otherwise agreed in writing by Miami-Dade County, the Contractor shall carry on and maintain progress of the Work pending any claim or court proceeding.
- 69.5 No claim may be raised by the Contractor later than ninety (90) days following the issuance by Miami-Dade County of the Certificate of Acceptance of Final Inspection, unless it is a claim regarding unpaid sums owed under the Agreement.
- 69.6 Any court proceeding or action arising out of, under, or in connection with, the Agreement, the Contract Documents, a breach thereof, or Article 69, shall be conducted in accordance with, and governed by, the laws of the State of Florida.
- 69.7 Should the Contractor sustain any damage or costs through any act or omission of any other contractor having a contract with Miami-Dade County, a subcontractor of such a contractor or any other person or entity, the Contractor shall have no claim against Miami-Dade County for such damage or costs, but instead, shall only have the right to recover such damage or costs from the other contractor, subcontractor, entity or person.
- 69.8 Notwithstanding any concurrence by the FTA, other Governmental agencies, or the State in or approval of the award of the Agreement, absent the express written consent by the FTA, other Governmental agencies, or the State, none of these entities is a party to the Agreement and shall not be subject to any claims, obligations or liabilities by the Contractor.

The Contractor agrees to include the above clause in each subcontract to the Agreement.

ARTICLE 70. WARRANTIES, REPRESENTATIONS AND COVENANTS

70.1 The Contractor warrants, affirmatively represents, and covenants as follows:

- (A) The Contractor shall utilize best practices in performing the Scope of Services; and
- (B) The TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP), the Work and all material, components, parts, equipment, products, hardware



and software systems furnished pursuant to the Contract Documents are, shall be, and shall perform, in accordance and conformance with the requirements of the Contract Documents; and

- (C) Title conveyed under the provisions of the Contract Documents is, and shall be good, and its transfer rightful and marketable, and all TOSRP goods, materials, supplies, systems, components, parts, equipment, products, hardware and software delivered, supplied, or returned to the County, are and shall be free of all security interests or other liens, claims, or encumbrances whatsoever. Contractor also hereby agrees to warrant and defend the same against all persons lawfully claiming whole or any part thereof;
- (D) All material, systems, components, parts, equipment, products, hardware and software furnished pursuant to the Contract Documents, and all other portions of the Work are and shall be: free from defective and inferior workmanship, Article 70 section 70.2, materials, equipment and/or workmanship; fit, sufficient, and of good quality; properly manufactured, and in compliance with all applicable laws, codes, regulations, and standards. Prior to the warranty period, any goods, supplies, systems, equipment, and work found not to be in accordance and conformance with the requirements of the Contract Documents shall be replaced by the Contractor, at no additional cost to the County.
- (E) All TOSRP licenses and any TOSRP functions, including any required customization, shall meet the material requirements of the Scope of Services,
- (F) All material, systems, components, parts, equipment, products, hardware and software furnished pursuant to the Contract Documents, and all other portions of the Work shall be free of the rightful claim of any person or entity for patent or trademark infringement; and
- (G) The Contractor shall deliver to the County all of the TOSRP components required to be furnished pursuant to the Contract Documents and/or required or necessary to deliver, install and integrate the TOSRP; and other portions of the Work (collectively, the "TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP)", and none of the TOSRP Contractor proprietary software or the County's use thereof will infringe any intellectual property rights of any third party. The County is hereby granted a non-exclusive license to own the TOSRP in perpetuity, only for uses as indicated in Exhibit 2 of this Agreement, Software License Agreement; and
- (H) The Contractor shall ensure, consistent with applicable industry standards, that the TOSRP including, without limitation, any and all customizations thereto, shall be documented in a manner consistent with Contract Documents and the best standards of the industry; and
- (I) During the performance of the Scope of Services, free of charge, and, for a minimum of one (1) year after the issuance of the Certificate of Acceptance of Final Inspection at the Contractor's then current rates, the Contractor shall provide TOSRP software upgrades and support to the County. The Contractor shall ensure that the latest, most up-to-date, released version of the software applications operating the TOSRP has been installed in the Scope of Services, which may require multiple upgrades by the Contractor. In the event that the Contractor should cease to support or repair the TOSRP or software, the



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Contractor shall provide the County, TOSRP software pursuant to the Escrow Agreement of like features and functionality at no additional cost to the County;

- (J) The Contractor shall enter into a TOSRP Escrow Agreement with an Escrow Agent pursuant to Exhibit 4 of this Agreement, at the cost identified in Exhibit 8 Price Schedule.

70.2 Unless otherwise expressly stated in the Contract Documents, "defective or inferior" shall mean any condition, malfunction, or failure, whether patent or latent, whereby equipment, hardware, and software shall, require repair, replacement, or other than routine maintenance; cause the TOSRP or other portion of the Work to cease operating or operate in a degraded mode; inflict damage or harm on any portion of the TOSRP or other portion of the Work; or otherwise fail to conform to the requirements of the Contract Documents, excluding any such condition, malfunction or failure caused by County's abuse or neglect, including but not limited to improper or insufficient maintenance or use in other than specified conditions, or caused by damage resulting from accident, vandalism, improper storage, improper handling, improper repair, improper testing, reconfiguration of MDT, or Acts of God.

70.3 Unless otherwise expressly stated in the Contract Documents "industry or legislative mandate" shall mean changes required to the System to meet compliance requirements. These changes shall be provided by the Contractor at no additional cost to the County.

70.4. The Contractor shall provide qualified technical support personnel through completion of the system warranty period, to provide preventive maintenance, assist with testing, perform corrective maintenance, and to resolve operation and maintenance problems from the time the first TOSRP is delivered to MDT and installed at MDT, until the issuance of the Certificate of Acceptance of Final Inspection.

Unless otherwise expressly stated in the Contract Documents, the period(s) for the warranties and guarantees set forth in, referenced in, included in, or required by, the Contract Documents or otherwise expressly made by the Contractor shall commence:

- (A) For the TOSRP, when the Certificate of Acceptance is issued, Contractor shall provide the warranty and support outlined within Software License Agreement (Exhibit 2 herein) and Software Maintenance Agreement (Exhibit 3 herein).
- (B) One (1) year for all remaining third-party hardware, software, equipment furnished under this Agreement for the TOSRP.
- (C) Prior to the acceptance by the County of the corresponding portion of the Scope of Services, the Contractor shall cause any warranties and/or guarantees received from Subcontractors, Suppliers and manufacturers to be made directly to the County, or if made to the Contractor, the Contractor shall immediately assign the warranty and/or guaranty to the County and shall furnish the County with written evidence of such warranties and guarantees and any assignment thereof. As necessary, all such warranties and guarantees shall be promptly enforced by the Contractor for the County's benefit.

70.5 Within the applicable warranty period, if the Software need to be repaired or replaced because of defective material or workmanship, because of a failure to conform to the requirements of the Contract Documents, the County will so inform the Contractor in writing and the Contractor shall, within the time specified Article 70 Section 70.8, and without additional expense to the County:



- (A) Repair or replace all such warranted Software and third-party hardware, as applicable.
 - (B) When the Contractor agrees that a portion of the Work is covered by warranty and warranty repair or replacement ("corrective work, or work"-applicable to Article 70) is required, the County and the Contractor shall agree, within five (5) business days of such decision, on the exact scope of the work to be performed under the warranty. If no agreement is obtained within the five (5) day period, the County reserves the right to commence the required work, only with regards to third-party hardware and software not proprietary to Contractor, in accordance with section 70.10. Such cost(s) for the work required shall be borne by the Contractor. The County reserves the right to make payment adjustments based on any cost(s) associated with this provision.
 - (C) After the Contractor has agreed that a portion of the Work is covered by warranty and has mutually resolved with the County the work necessary, the Contractor shall promptly commence within a time frame mutually agreed to by the Contractor and the County.
 - (D) The Contractor, its Subcontractor or its Supplier may be permitted to use the County's facilities to perform warranty work, provided that such work does not interfere with or potentially violate the requirements of any of the County's labor or other agreements, is conducted during normal business hours, does not interfere with other County activities, and is performed in accordance with the County's operational needs, policies and directions. Any damage to County property caused by the Contractor, its Subcontractor or its Supplier in performing such required work shall be the sole responsibility of the Contractor and shall be at the Contractor's expense.
 - (E) The Contractor shall provide, at its own expense, all parts, tools, and labor required to complete repairs, replacement or other work.
 - (F) If the work involves or requires the redesign or modification of any part of the TOSRP, including but not limited to the system, subsystem, component, part, product, hardware, or equipment, the Contractor, at its sole expense, shall revise and update all manuals, documents, and data affected thereby.
- 70.6 Should the Contractor fail to: (i) agree that a defective, inferior, or non-conforming third-party software or hardware not proprietary to the Contractor portion of the Work is covered by warranty or guaranty; (ii) proceed within the time specified by Article 70; or (iii) proceed in accordance with the applicable warranty or guaranty, the County may have such work performed by itself or others and the costs of such work shall be the responsibility of the Contractor and may be deducted from monies due, or to become due, to the Contractor under the Agreement or any other contract with the County. The County shall have the duty to mitigate damages. In the event that final payment under the Agreement has been made, the Contractor shall, within thirty (30) days of notification from the County, reimburse the County for such costs via credit memo.
- 70.7 If warranty work, pursuant Article 70.6, is performed by or on behalf of the County, the following will apply:
- 1. The County shall be fully reimbursed by the Contractor for all labor, parts and other costs for all such warranty repair or replacement work performed by, or on



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behalf of, the County. Labor rate reimbursement shall be at the burdened labor rates paid by the County.

2. The performance of any warranty work by the County shall not relieve the Contractor of any responsibility or obligations under the Contract Documents, the applicable warranty or otherwise.
- 70.8 If any portion of the Work for any part of the Software is delivered, installed, or replaced during the applicable warranty period, the properly delivered, installed or replaced portion shall be warranted for a period of the duration of the contracted warranty.
- 70.9 The Contractor shall provide an electronic file, approved in writing by the County, for the TOSRP at the time of Delivery for Acceptance Testing to the County. Information in the electronic file shall include, at a minimum, the following:
- (A) Name of specific components, systems and subsystems;
 - (B) Manufacturer name and model number of each listed component, system and subsystem;
 - (C) Component, system or subsystem serial number;
 - (D) The County TOSRP number;
 - (E) Acceptance date of the TOSRP module; and
 - (F) The manufacturer identification number for each component.

Electronic file shall be organized for ease of screen display and printing. Access to the electronic file shall be on a record-by-record basis, with each record value correctly named.

Standardized Warranty Claim forms will be provided by the County.

- 70.10 Except as otherwise set forth in the Contract Documents, the guarantees, warranties and representations set forth in, referenced in, included in, or required by, the Contract Documents are in addition to all other warranties, express or implied, whether statutory or common law, including, without limitation, any warranty or merchantability.

ARTICLE 71. DEFECTIVE MATERIALS

- 71.1 Software or equipment for the TOSRP, that do not conform to the requirements of the Contract Documents, may be rejected by the County, during the implementation and warranty period as provided for in this Agreement. If so directed by the County, the Contractor shall promptly remove, or replace, in a manner acceptable to the County within reasonable discretion, such Software and equipment. No compensation shall be allowed to the Contractor for such repair or removal and replacement.
- 71.2 Upon failure of the Contractor to repair remove or replace defective or non-conforming software or equipment, after notice in writing from the County, the County may cause the defective or non-conforming software or equipment to be repaired, removed or replaced



by other subject to the County's duty to mitigate damages. Any reasonable costs incurred by the County in having defective or non-conforming software or equipment removed or replaced shall be borne by the Contractor and such costs may be deducted from any monies due, or which become due to the Contractor.

ARTICLE 72. INTENTIONALLY OMITTED.

ARTICLE 73. USE OF BRAND NAME MATERIALS OR EQUAL

73.1 Equipment or other materials to be incorporated into the Work may be designated in the Contract Documents by their brand names, the names of manufacturers and their catalog information or otherwise. The use of an "equal item" which the Contractor represents to be of at least equal quality and to have the required characteristics for the purpose intended may be permitted by the County to be utilized by the Contractor subject to the following requirements:

- (A) "Equal items" may not be used where the components, parts, equipment or other materials are designated to match others in use in the County's TOSRP or equipment; and
- (B) The burden of proof as to quality and suitability of an "equal items" shall be upon the Contractor and it shall furnish information necessary for such determination, as required by the County, at no additional costs to the County. The County shall be the sole judge as to the quality and suitability of "equal items" and the County's decision shall be final and binding; and
- (C) Where use of an "equal item" involves redesign of, or changes to, other portions of the Work, or results in the need to use maintenance tools or equipment not in the possession of the County or procedures differing from those procedures currently used by the County, the cost and time required to effect such redesign, changes or provide any required maintenance equipment or tools in quantities determined by the County to be necessary shall be borne by the Contractor; and
- (D) No tests will be made, nor action taken, relating to approval of an "equal item", until the request for substitution is made in writing by the Contractor accompanied by complete data as to the equality of the item proposed. To permit approval without delaying the Work, such request shall be made no less than ten (10) days prior to the scheduled start of the related work, provided the requirements of this Provision are met.
- (E) Approval of an "equal items" request shall only be for the characteristics or use named in such approval and shall not be used to change or modify any other requirements of the Contract Documents. Further, each approval shall be limited to the portion of the Work for which it is given; and
- (F) Any and all costs and/or delays associated with utilization of an "equal item" shall be borne by the Contractor.

73.2 The specification of a brand name, system, subsystem, component, part, equipment or other material in the Contract Documents shall not relieve the Contractor from its responsibility to complete the Work in accordance with the requirements of the Contract Document. The Contractor shall notify the County of any brand name, system,



subsystem, component, part, equipment or other material specified in the Contract Documents which the Contractor believes inappropriate, and/or no longer available, for performing the Work and shall propose a suitable substitute for consideration by the County. Change notice(s) shall be negotiated as needed.

ARTICLE 74. PLANT AND FACILITY INSPECTIONS

74.1 The County, and/or its authorized representative, may inspect, the Contractor's or Subcontractor's plant(s) or facility(ies) during normal business hours, any materials, parts or equipment procured or manufactured at said plant or facility, as well as, may inspect, at the source of supply, any materials, parts or equipment procured and/or manufactured by a Subcontractor or Supplier or other person, for installation into, or to be used for the TOSRP, or the Work. The County, or its authorized representative, shall have escorted entry at all times, during normal business hours, to such parts of the plants that pertain to the manufacture or production of the TOSRP, or materials, parts or equipment to be installed into or used for the TOSRP, or the Work. Adequate facilities to make the necessary inspection shall be furnished, at no cost, to the County. The responsibility for providing a satisfactory TOSRP, materials, parts and equipment to install into, or use for the TOSRP, or the Work and properly completing the Work rests entirely with the Contractor, notwithstanding any prior inspections or tests by the County, or its authorized representative.

ARTICLE 75. OPERATIONS AND STORAGE AREAS

75.1 To the extent that any portion of the Work is performed on the County's property, all operations of the Contractor, including storage of materials and equipment, shall be confined to areas authorized and approved by the County. The County assumes no responsibility for equipment, material, components, systems or subsystems stored at County facilities.

75.2 Limited parking facilities for the Contractor's and its Subcontractor's and Supplier's personnel will be provided as available by the County, on its property, in an area(s) to be determined by the County. Additional parking facilities for the Contractor's and any Subcontractor's or Supplier's personnel shall be the Contractor's responsibility.

ARTICLE 76. SOURCE OF SUPPLY AND QUALITY OF MATERIALS.

76.1 For the purposes of Article 76, only, the term "materials" shall mean all material, equipment, components, hardware, parts and products furnished to complete the TOSRP or any other portion of the Work, as identified in this Agreement.

76.2 The Contractor shall furnish all materials except those materials to be furnished by the County as expressly designated in the Contract Documents.

76.3 Notwithstanding any prior inspection or approval, only materials conforming to the requirements of the Contract Documents, or approved by the County shall be utilized by the Contractor.

76.4 The materials furnished by the Contractor shall be new and not used or refurbished except as otherwise provided in the Contract Documents. The materials shall be



manufactured, handled, and used in a proper and workmanlike manner to ensure that the Work is completed in accordance with the Contract Documents.

- 76.5 The materials furnished shall conform to the requirements of the Contract Documents for the purposes specified, with properties necessary to withstand, safely and reliably, the strains and stresses to which the Solution will be subjected in normal and/or expected operation. In addition to inspection and testing performed by the Contractor, materials and equipment shall be subject to inspection and testing by the County, at the County's discretion, at either the place of production or manufacture, at the shipping point or at the destination.

ARTICLE 77. BUY AMERICA REQUIREMENTS

77.1

- A) The Agreement and the Work are subject to the provisions of Section 165 of the Surface Transportation Assistance Act of 1982, and 49 CFR Part 661. Further, the Agreement and the Work are subject to the requirements of the Surface Transportation and Uniform Relocation Assistance Act of 1987 and any implementing regulations issued thereunder.
- B) The Contractor must submit a completed Buy America Certificate as required by the RFP.
- C) The Contractor understands and agrees that, pursuant to 49 CFR Part 661.13, whether or not it certifies that it will comply with the applicable Buy America requirements, it is bound by its original certifications and is not permitted to change its certifications for the duration of the Contract. In addition, if the Contractor certifies that it will comply with the applicable Buy America requirements, the Contractor understands and agrees that it is not eligible for a waiver of those requirements.
- D) The Contractor shall fully cooperate with Miami-Dade County in the performance of both a pre-award and a post-delivery audit by Miami-Dade County or its representative to ensure that the Work fully complies with the applicable requirements of Buy America; 49 U.S.C. § 5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663 and any revisions thereto.

ARTICLE 78. DAVIS BACON/RESPONSIBLE WAGES AND BENEFITS (ORDINANCE No.95-183) ANTI KICKBACK ACT.

- 78.1 Any agreement entered into by the Contractor and Miami-Dade County will be subject to the requirements of a financial assistance Contract between Miami-Dade County and the U.S. Department of Transportation. Any Contractor and its subcontractors performing work at the Work site, will be required to comply with the Safety and Health Regulations for Construction 29 CFR Parts 1910 and 1926, the Davis-Bacon Act and/or the Responsible Wages and Benefits (ordinance 95-183); whichever is higher, the Anti-Kickback Act, the Contract Work Hours and Safety Standards Act, the President's Executive Order No. 11246 and No. 11375, and Miami-Dade County Resolution of Equal Employment Opportunity. Any Contractor, and his subcontractors performing work at the Work site, will be required to pay basic hourly wages, health, welfare, pension, vacation, and apprenticeship training benefits, at rates not less than those established by the U.S. Department of Labor.



ARTICLE 79. RESPONSIBILITY OF COUNTY

- 79.1 The Project Manager will be the County's representative for the Work throughout the contract term, including the Warranty period.
- 79.2 The Project Manager will act on behalf of the County to the extent provided in the Contract Documents, unless modified in writing by the County.
- 79.3 All instructions issued by the Project Manager shall have the same force and effect as if issued by the County.
- 79.4 The County shall have access to the Work at all times and the Contractor shall provide facilities required for safe access to enable the County to perform the County's functions and responsibilities under the Contract Documents.
- 79.5 The County has the authority to issue a Stop Work Order to stop a specific work activity if the work is not being executed by the Contractor in accordance with the Contract Documents. Any costs incurred by the Contractor as a result of the issuance of a Stop Work Order arising out of the work not being executed by the Contractor in accordance with the Contract Documents shall be paid by the Contractor. Should the Contractor disagree with the issuance of the Stop Work Order, it shall follow the procedures set forth in Article 69.

ARTICLE 80. CONTRACTOR DOCUMENT CONTROL REQUIREMENTS

- 80.1 The Contractor shall establish the necessary procedures to assure effective compliance with the document control requirements of the Contract Documents or otherwise specified by the County for the preparation, submission and retention of data, drawings, specifications, product data, transmittal letters, telephone log memoranda, meeting minutes, change orders, reports, schedules and other documents (hereinafter the "Contractors Document Control Program").
- 80.2 The Contractor's Document Control Program shall be sufficient to allow for County's review and oversight in the following areas:
 - (A) Technical Documents – to assure design integrity and a record of the as-built configuration for the TOSRP.
 - (B) Production Specifications – to assure Contractor's concurrence regarding the manufacturing process which shall translate the TOSRP design from a paper-defined form into an operable TOSRP.
 - (C) Design Reviews – to assure design concurrence between the County and the Contractor, regularly scheduled design reviews shall be conducted, at a location to be determined by the County, for the purpose of monitoring progress on a real-time basis. Such concurrence shall not relieve the Contractor from responsibility to comply with all the requirements of the Contract Documents. The Contractor shall submit a design review schedule in accordance with the Contract Documents. The design review schedule shall include the decision-issue subjects of each design review.



- 80.3 Product and technical data and other documents required by the Contract Documents shall be submitted for the County's review.
- 80.4 The Contractor shall employ a system of identifying numbers for data, specifications, and other documents which shall identify all distinct software, hardware, and equipment.

ARTICLE 81. CONTRACT DOCUMENTS AND DATA

- 81.1 The County will furnish the Contractor, for its use, the following Contract Documents:
 - A. One original copy of the executed Contract Forms;
 - B. One (1) copy of the Scope of Services/Technical Specifications and Form of Agreement; and
 - C. One (1) set of any related addenda.
 - D. The Contractor shall submit five (5) reproducible copies of all required data or other submittals to the County for approval. The data or other submittals shall be complete and detailed. The data or other submittals shall be submitted using standard transmittal forms in accordance with instructions furnished by the County.
 - E. All data and other submittals, including letters and manuals, shall be legible and provided in English.
 - F. The review and/or approval of data or other submittals by the County shall not be construed as:
 - 1. Permitting any departure by the Contractor from the requirements of the Contract Documents;
 - 2. Relieving the Contractor of the responsibility for any defects, errors or omissions, including in details, dimensions, or materials, or for complying with the requirements of the Contract Documents;
 - 3. Approving departures from details furnished by the County, except as otherwise provided herein; or
 - 4. Approving Contractor's subsequent requests, data, or other submittals.
 - G. The Contractor's data shall define the approved configuration of all equipment whether for test, production or for operational use. TOSRP configuration shall be identified to the lowest level required to ensure repeatable performance, part replacement, and quality.
 - H. The data and other submittals shall be coordinated so that any information required by others is included on the data and other submittals.
 - I. Changes on the data and other submittals made by the Contractor at the direction of the County shall be clearly identified by appropriate revision marks at



the location on the data and other submittals where changes were made and by appropriate notation on the data and other submittals.

- J. If the data or other submittals show variations from the requirements of the Contract Documents, the Contractor shall specifically describe such variations in its transmittal form. The County may, in its sole discretion, approve any or all such variations. In the execution of any variation which was not specifically identified in the Contractor's transmittal form and not specifically and expressly approved by the County, the Contractor shall not be relieved of the responsibility for executing the Work in accordance with the Contract Documents, even though such data or other submittals have been approved.
- K. If approved by the County, each copy of the data or other submittals will be stamped "Approved." The Contractor shall resubmit any data or other submittals stamped "Not Approved," after the required changes are incorporated, for the County's review and approval. Changes indicated on such data or other submittals shall also be incorporated in the other submittals required by the Contract Documents.
- L. Data or other submittals "Not Approved" will be returned to the Contractor with required corrections for re-submittal. Re-submittals shall be handled in the same manner as first submittals and shall be performed at the sole expense of the Contractor. If the Contractor considers any correction indicated on the drawings, data or other submittals to constitute a change to the Contract, notice as required under Article 67, shall be given to the County.
- M. The County will return data reviews and/or other required submittals to the Contractor within fourteen (14) business days from date of receipt by the County of all satisfactory documentation necessary and required by the Contract Documents to review the data or other submittal. In the event that the nature or number of submittals submitted by the Contractor is such that the County determines that it cannot return the submittals within the said fourteen (14) working days, the Contractor shall work with the County to prioritize the in-process submittals.
- N. Once the data or other submittals have been approved by the County, the Contractor, except as otherwise stated in the Contract Documents, shall carry out the related work in accordance therewith and shall not make any further changes unless approved in writing by the County.
- O. The Contractor shall be responsible for and bear all delays, cost or damages which may result from ordering any systems, subsystems, components, parts or other materials or proceeding with the portion of Work related to the data or other submittals prior to approval by the County data or other submittals.
- P. Data shall be on 8½ inch by 11 inch sheets and suitable for xerographic reproduction. Fold-out sheets 11 inches by 17 inches, with reinforced binder tabs, may be used for figures and sketches. The pages shall be bound in a fashion which is readily disassembled and reassembled. In addition to the printed copies required, printed material shall also be furnished in digital format using Microsoft Word.
- Q. All data shall contain the following label, "These documents may contain Miami-Dade Transit security sensitive information". Such information should not be



publicly disclosed without the expressed written consent of Miami-Dade Transit under Florida Statute 119.071(1) and FDOT Rule 14-55.0013(8)".

ARTICLE 82. PERSONNEL FOR THE WORK

- 82.1 Contractor shall secure, at its own expense, all personnel required to perform the Work. Such personnel shall not be employees of MDT, County of Miami-Dade.
- 82.2 All personnel engaged in performing the Work shall be fully qualified to perform such Work.
- 82.3 In the event the Contractor wishes to substitute key personnel, the Contractor must notify the County in writing and request written approval, which shall not be unreasonably withheld, for the substitution at least ten (15) business days prior to effecting such substitution.
- 82.4 The Contractor shall remove from the performance of the Work any of its or its Subcontractor's or Supplier's personnel assigned to the performance of the Work if the County considers such removal necessary, in its reasonable discretion, in its best interests and requests such removal in writing.
- 82.5 At least one technical support person and one for the maintenance support for software support shall be made available from the time the first unit of TOSRP equipment is delivered through the end of the first year of warranty.

ARTICLE 83. IDENTIFICATION OF EMPLOYEES

- 83.1 Photo identification badges, issued by MDT, shall be worn at all times by all Contractor, Subcontractor and Supplier personnel when on the County's property. The badges shall show the employer's name and employee's name, picture and identification number. Also, Contractor and Subcontractor shall attend a mandatory Rail Safety Indoctrination meeting scheduled by County and shall wear the issued safety badge at all times, together with the photo identification badge. Such identifications must be displayed in a prominent manner on each person while on the County's property and shall be produced whenever required by County officials and Security personnel. Access to the County's property will be granted only to properly identified representatives of the Contractor, Subcontractors, and Suppliers.

ARTICLE 84. LAWS TO BE OBSERVED

- 84.1 The Contractor shall be responsible for keeping itself informed of, and shall comply with all applicable requirements of law, including but not limited to, all applicable international, federal, state and local laws, codes, rules and regulations and any changes thereto which in any manner affect persons engaged or employed in the Work, affect the materials used in the Work, or affect, in any way, the Work, and all such orders and decrees of bodies or tribunals having jurisdiction or authority over the same. The Contractor and its officers, directors, employees, agents, Subcontractors and Suppliers shall indemnify and hold harmless the County, and all of their officers, directors, agents and employees against all claims and liabilities arising from or based upon the violation of any such requirements whether by the Contractor or its officers, directors, employees, agents, subcontractors or suppliers. If any discrepancy or inconsistency is discovered in



the Contract Documents in relation to any requirements of law, the Contractor shall immediately report the same to the County in writing.

ARTICLE 85. PERMITS

85.1 The Contractor shall, without additional expense to the County, be responsible for obtaining any and all licenses and permits necessary for the proper and timely completion of the Work.

ARTICLE 86. INTENTIONALLY OMITTED.

ARTICLE 87. ENTIRE AGREEMENT

87.1 All the agreements between the County and the Contractor are included in the Contract Documents and no warranties, expressed or implied, representations, promises, or statements have been made by the County unless set forth therein in writing and no change or waiver of any provision in the Contract Documents shall be valid unless made in writing and executed by the County.

87.2 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.

87.3 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.

87.4 In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose at its own expense.

ARTICLE 88. ACCESS TO AND RETENTION OF DOCUMENTS

88.1 The Contractor shall provide Miami-Dade County, and any of its authorized representatives, subject to entering into Non-Disclosure Agreements, access to any work, books, documents, papers and records of the Contractor which pertain or relate to this Agreement or the Work for the purposes of making audits, examinations, excerpts and/or transcriptions during the performance of the Work and for a period of five (5) years after the date of the issuance of the Acceptance Certificate, except in the event of litigation or settlement of claims regarding or arising from the performance of this Agreement or the Work, in which case the Contractor shall maintain all such documents until all such litigation or settlement of claims have been fully completed and all appeals or exceptions exhausted.

88.2 Any documents so disclosed shall be clearly marked as "trade secrets/proprietary documents – not to be disclosed" and County shall not disclose said documents or their contents or information contained therein to any third party or any County employee or agent who is not subject to the Non-Disclosure Agreement absent an order by a court of competent jurisdiction or written authorization by the Contractor to do so. MDC shall defend any action to compel such disclosure through appeal if requested by the



Contractor to do so provided; however, that the Contractor shall indemnify the County for any attorney's fees and costs that the County may be ordered to pay pursuant to Florida Statute 119 as a result of defending such an action. MDC shall immediately provide notice to the Contractor of any request it receives for said records.

- 88.3 Upon the completion of the periods set forth in Article 87 section 87.1, the Contractor shall not destroy any such documents and data without first offering them, free of charge, to the County.
- 88.4 The Contractor shall include, or have included, the requirements of Article 87 section 87.1 in all subcontracts of any tier.
- 88.5 The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 89. USE OF MIAMI-DADE NAME IN CONTRACTOR ADVERTISING OR PUBLIC RELATIONS

- 89.1 The Contractor shall not publish, or allow to be published, in any advertisements, public relations programs or other documents, any information or data related to this Agreement or the Work, until after the Contractor has submitted such proposed document to, and received prior written approval from, the County.

ARTICLE 90. BUSINESS APPLICATION

- 90.1 The Contractor shall be a registered vendor with the County's Internal Services Department (ISD) - Procurement Management Services (PMS), 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.
- 90.2 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 Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County 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 91. COMPLIANCE WITH LOCAL AND STATE TRAVEL REQUIREMENTS

91.1 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 92. INTENTIONALLY OMITTED.

ARTICLE 93. PATENT AND COPYRIGHT INDEMNIFICATION

93.1 To the best of Contractor's knowledge, the Contractor warrants that Software furnished hereunder, including related documentation, and processes do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.

93.2 The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of the software, and processes in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any third party action brought against the County with respect to any claim, demand, cause of action, debt, or liability.

93.3 If such Software materials, or processes are held to constitute an infringement and their use enjoined, the Contractor, at its expense, shall, without prejudice to any other rights of the County or the Project Manager:

- (A) Secure for the County the right to continue using such Software materials, by suspension of the injunction or by procuring a license or licenses; or
- (B) Replace such Software materials that provide similar functionality; or
- (C) Modify such Software materials or processes so that they become non-infringing, which modification shall not adversely affect the functionality of such Software materials or processes.

93.4 The Contractor shall be solely responsible for informing the County, once Contractor has been made aware that a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's reasonable judgment, use thereof would delay the Work or be unlawful.

93.5 The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.



ARTICLE 94. NOTICE TO PROCEED

- 94.1 A written **Notice to Proceed (NTP)** will be delivered to the Contractor as soon as possible after execution of the Agreement and approval of any bonds and insurance certificates or policies by the County. Any bonds and certificates must be delivered to the County within ten (10) business days after execution of the Agreement. The Contractor shall commence work as specified in the Notice to Proceed and shall thereafter diligently prosecute the Work, as authorized by a Work Authorization, to completion.

ARTICLE 95. PROJECT PLANNING AND KICK-OFF MEETING

- 95.1 Pursuant to Phase 1 of Exhibit 5 - Project Schedule, a project planning and kick-off meeting will be held between the County and Contractor to review project deliverables, Contractor's Personnel and the payment and project schedules.

ARTICLE 96. TIME OF COMPLETION

- 96.1 The Contractor shall complete all designated portions of the Work, which shall include, but is not limited to, the completion of all required tests, the one (1) year warranty period for the TOSRP as Article 70 Section 70.4, and all necessary repairs and modifications resulting from the tests, and warranties, set forth in the County approved Project Schedule, unless revised by Change Order. Time shall be computed starting with the first day after receipt of the Notice to Proceed and ending with the last day of the Work.
- 96.2 Pursuant to Article 56 the contractor may not be assessed liquidated damages for a delay in completion of Work:
- (A) Due to unforeseen causes beyond the control and without the fault or negligence of the Contractor (force majeure) such as those caused by act of God or of a public enemy, war, acts of terrorism, sabotage, explosions, fire, floods, unusually severe weather, hurricanes, epidemics, pandemics, quarantine restrictions, strikes and other work stoppage caused by a labor dispute, shortage of materials and freight embargoes, provided that the Contractor has taken reasonable precautions to prevent delays due to such causes.
 - (B) Unusually severe weather is defined as adverse occurrences beyond the weather norms substantiated by the U.S. Department of Commerce in their Local Climate Data as published by the National Oceanic and Atmospheric Administration-Environmental Data Service, in its periodic reports and annual summary. Occurrence of unusually severe weather shall be recorded on the Project Schedule only after a finding of merit by the County.
 - (C) Due to other causes beyond the Contractor's reasonable control, such as acts or omissions of the County, or the County's failure to perform its obligations under this Contract, or any delay that is caused by the County.

The Contractor shall not be entitled, nor shall an adjustment in Time of Completion be granted, for a delay caused by a shortage of materials, except the County-furnished materials, unless the Contractor furnishes to the County documentary proof that the Contractor has diligently made every effort to obtain such materials from all known and reasonable sources. The Contractor shall also submit proof, in the form of critical path



analysis data, showing that the inability to obtain such materials when originally planned did in fact cause a delay in the Time of Completion which delay could not be eliminated or reduced by revising the sequence of the Contractor's operations. Only the physical shortage of material shall be considered under this provision as a cause for an adjustment in Time of Completion. No consideration shall be given to any claim that material could not be obtained at a reasonable, practical or economic cost.

- 96.3 Within five (5) business days after the end of a delay the Contractor shall furnish the County with detailed information concerning the circumstances of the delay, number of days actually delayed, the appropriate Contract Document references and the commercially reasonable measures taken to prevent or minimize the delay. Failure by the Contractor to submit such information shall be sufficient and valid cause for the County to deny the Contractor's request for an adjustment in the Time of Completion. After receipt of such information from the Contractor, the County will decide, in its reasonable discretion, the length of the adjustment in Time of Completion, if any, to be granted to the Contractor, which decision shall be final and binding upon the Contractor.
- 96.4 If the prosecution of a portion of the Work is delayed, other portions of the Work unaffected by the delay shall be diligently prosecuted either to completion or until the prosecution of the delayed portion of the Work can be resumed. A Force Majeure event shall not excuse the County from its obligation to pay monies owed the Contractor.
- 96.5 Contractor agrees to make all reasonable efforts to perform all the Services in accordance with the timelines set forth in Exhibit 5 – the Project Schedule, as it may be amended from time to time by the parties.

ARTICLE 97. TESTING

- 97.1 Testing shall be performed in accordance with the requirements of the Scope Of Services.
- 97.2 Any defective or inferior materials, equipment or workmanship which is discovered during the testing or inspection shall be promptly corrected to the specification of the Contract Documents.

ARTICLE 98. SHIPMENTS/DELIVERIES

- 98.1 Shipments and deliveries shall be made by the Contractor in accordance with the Contract Documents or any written instructions received by the Contractor from the County. All TOSRP, systems, subsystems, components, parts, equipment and other portions of the Work to be delivered to the County pursuant to the Contract Documents shall be FOB delivered to the County to the point set forth below in Article 98 Section 98.3 and all deliveries shall be coordinated with the County. Unless otherwise provided in the Contract Documents, delivery to the County must be made on, or before, the date specified in the Contract Documents.
- 98.2 All shipments or deliveries of TOSRP to the County shall only be made in the manner and on the date specified in the Contract Documents or as otherwise directed, in writing, by the County. Adjustments in the scheduled delivery date for TOSRP to the County's property shall be allowed only upon receipt of written approval by the County, which shall not be unreasonably withheld.



- 98.3 All shipments and deliveries to the County required by the Contract Documents shall be made between the hours of 7:00 a.m. and 3:00 p.m., Monday through Friday, excluding all the County holidays. Shipments and deliveries to the County shall be made to:

**Miami-Dade Transit
ATTN: TOSRP Project Manager
701 NW 1st Court – 12th Floor
Miami, Florida 33136**

unless the Contractor is otherwise directed in writing by the County.

- 98.4 In the event any item shipped by the Contractor is not received by the County, or its agent, the Contractor shall immediately replace said item in like quantity.
- 98.5 If the Contractor delivers a third-party hardware or third-party software item, that is not proprietary to the Contractor, which fails to meet the requirements of the Contract Document, and does not promptly replace said third-party hardware or third-party software item as required by the Contract Documents, or if the Contractor fails to deliver a third-party hardware or third-party software item within the time specified in the Contract Documents after notification by the County, the County reserves the right to purchase said third-party hardware or third-party software item in the open market and deduct the expense, including any excess in price over the cost of said item pursuant to the Agreement, from the Contract Sum. If the amount due the Contractor under the Agreement is not sufficient to meet such expenses, the County may proceed against the Contractor.

ARTICLE 99. MEETINGS AND REPORTS

- 99.1 The Contractor shall record and maintain the minutes for all meetings held with the County. All meeting minutes and/or recordings shall be provided to the County for approval prior to issuance.
- 99.2 Meetings shall be scheduled at the convenience of the County and at a location selected by the County.
- 99.3 Meetings requiring the attendance of the Contractor shall include the Project planning and Kick-off meeting; all design reviews, Monthly Progress Meetings and others as noticed by the County.



ARTICLE 100. TRAINING

- 100.1 Training on the provided hardware and Software shall be performed by the Contractor in accordance with the requirements of the Scope of Services. Contractor shall provide County with a Training Plan (refer to "Table of Performance Period") where the contents of the Training will be detailed. Training sessions will be scheduled in regular County business hours at a County facility and will include at least 2 MDT (IT) staff members designated by the Project Manager as "System Administrators". Contractor shall be responsible for providing all audio/visual and other necessary materials and equipment for scheduled training sessions. Project Manager will assess training effectiveness based on the completion of the Training plan. Project Manager will issue Contractor a Training Completion Notice upon completion of training. Such payment is contingent upon issuance of the aforementioned Training Completion Notice.
- 100.2 Instructors supplied by the Contractor for any training required by the Contract Documents shall be totally fluent in English, both in technical terminology and commonly used expressions.
- 100.3 The Contractor shall reference training requirements in Section 8 Scope of Services.

ARTICLE 101. SCOPE OF PAYMENT

- 101.1 The Contractor will be paid, in the manner set forth in Article 102 and Article 104, the Contract Sum provided for in the Agreement which sum shall be full compensation for all costs incurred for furnishing all Work, including management, materials, manufacturing, labor, incidentals, tools and equipment, for performing the Work in a complete and acceptable manner.
- 101.2 Full compensation for conforming to all the requirements of the Contract Documents shall be considered to be included in the Contract Sum and no additional compensation shall be owed or allowed to the Contractor unless authorized via Change Order.

ARTICLE 102. PROGRESS PAYMENTS

- 102.1 The Agreement is subject to the availability of funds and the County's obligation under the Agreement is contingent upon the availability of such funds from which payment for the Agreement can be made. No obligation on the part of the County for any payment shall arise until such funds are made available to the County for the Agreement and until the Contractor receives written notice of such availability from the County. Notwithstanding anything to the contrary hereunder, the County shall pay the Contractor for all Work, Software, and hardware/equipment completed, delivered, and accepted by the County in accordance with the Contract documents.
- 102.2 The County will make progress payments to the Contractor in accordance with the total Price of the TOSRP found on the Contract Price Form A (Exhibit 8), as specified hereto, and applied to each of the milestones set in Exhibit 6, Payment Schedule. Payment will be made during the course of Contractor's satisfactory performance of the Work, on approved invoices submitted by the Contractor. Progress payment invoices shall not be submitted by the Contractor until after satisfactory completion of each of the milestones



and shall not exceed the following stated corresponding percentages of the total price for each milestone.

102.3 Invoices for progress payments shall be submitted by the Contractor on forms supplied by the County. Each invoice shall be supported, as required by the Contract Documents, with evidence that the activities associated with the Milestone Payments have been completed. Contractor's invoices shall be submitted to the County. Each invoice shall include:

- A) Agreement number;
- B) Serial number(s) of TOSRP equipment invoiced (if applicable) and all documents required by Contract Documents;
- C) Total invoice amount.

The Contractor shall certify, in each invoice, that the Work invoiced has been done and performed in accordance with the requirements of the Contract Documents.

102.4 In the event expenditures reimbursed to the Contractor under the Contract Documents are subsequently disallowed by the County, due to accounting errors or changes not in conformity with the Contract Documents, the Contractor shall immediately provide a credit to the County.

102.5 After receipt, the County will review and evaluate each invoice for progress payments and the supporting data, and forward same to the County for approval with County's recommendation on payment. No progress payment will be approved by the County until an invoice therefore is received from the Contractor and accepted, and the County has verified that all Work covered thereby has been performed in accordance with the requirements of the Contract Documents.

102.6 The County will notify the Contractor within fifteen (15) days of receipt of an invoice if there are any issues regarding the invoice. Each County-approved invoice will be paid by the County within forty-five (45) days of the County's receipt of a proper invoice in accordance with Florida Statute 218.74 and section 2-8.1.4 of the Miami-Dade County Code. Milestone payments shall not be construed as relieving the Contractor from sole responsibility for all engineering, material, equipment and work upon which payments have been made and the restoration of all defective work, or as waiving the right of the County to require the fulfillment of all of the requirements of the Contract Documents.

102.7 Payments made under the Contract Documents by the County shall not be construed as an acceptance of defective work or acceptance of improper material, or as condoning any omission of required work. No payment or certificate, final or otherwise, shall be construed as relieving the Contractor from its contractual obligations to make acceptable any defects and consequences thereof, discovered in the Work, even when discovered after completion or acceptance of same. No payment or certificate, final or otherwise, shall be construed as a waiver of any of the Contractor's obligations set forth in the Contract Documents.

102.8 No progress payments will be owed or made for any portion of the Work not in accordance with the requirements of the Contract Documents.

102.9 The County may withhold payment of any progress payment due the Contractor until the Contractor has satisfied all requirements for such payment as required by the Contract



Documents. Also, if documents, data, samples, drawings, and submittals or any part thereof required to be supplied by the Contractor pursuant to the Contract Documents are not delivered within the time specified by the Contract Documents, or are deficient upon delivery, the County may, until such documents, data, samples, drawings or submittals are delivered or the deficiencies are corrected, withhold any monies due or that may become due to the Contractor. The withholding of any payments to the Contractor shall not be construed as a waiver of any rights accruing to the County under the Contract Documents or according to law.

ARTICLE 103. AGREEMENT ADMINISTRATION CLOSE-OUT

103.1 Notwithstanding execution of any maintenance and support agreements, the following list of items collectively constitutes the administration close-out for work performed under this Agreement:

1. The Contractor supplying a general release to the County in a form to be supplied by the County;
2. Release of all claims and liens against the County arising by virtue of the Agreement;
3. Finalized Operation;
4. Expiration of the one (1) year warranty

103.2 All of the above listed items shall be completed and submitted to the County at the latest, within thirty (30) days after the completion by the Contractor and the acceptance by the County of all other portions of the Work. Agreement Administration Close-Out shall not be considered complete until all four (4) items (abovementioned) which comprise the Agreement Administration Close-Out work are completed in accordance with the Contract documents.

ARTICLE 104. FINAL PAYMENT

104.1 Within forty-five (45) days after completion by the Contractor, and issuance of the Certificate of Acceptance and Final Inspection by the County of all portions of the Work, the Contractor shall prepare and submit an invoice for the final payment. Prior pay estimates and payments shall be subject to correction on the proposed final payment.

104.2 The Work shall not be complete until, as noted above, the Contractor has completed, and the County has accepted, all portions of the Work including, but not limited to, the completion and, as applicable, acceptance of: all required tests; all technical support; period of one (1) year warranty; and all necessary repairs and modifications resulting from said tests, and warranties, as required by the Contract Documents.

104.3 The County will review the Contractor's invoice for the final payment. Any changes or corrections found necessary by the County will be submitted to the Contractor for revision within ten (10) business days from date of invoice. Within ten (10) business days thereafter, the Contractor shall submit to the County an invoice for the final payment incorporating any changes or corrections made by the County. Said invoice will



then be reviewed by the County and if approved by the County, this estimate will become the approved final payment. If, however, an invoice for the final payment is not submitted by the Contractor within sixty (60) days after the completion by the Contractor and acceptance by the County of all portions of the Work, the County may elect to make payment of such sums which are not in dispute, without prejudice to the rights of either the County or the Contractor in connection with such sums which are in dispute.

104.4 Upon approval of the invoice for the final payment by the County, and after completion of the Agreement Administration Close-Out items as provided Article 103, the County will issue a Certificate of Acceptance of Final Inspection. The Certificate of Acceptance of Final Inspection shall certify that all the Work has been completed and accepted as of the date of the Acceptance Certificate subject to any guarantee or warranty, expressed or implied, provided by the Contractor or pursuant to the Contract Documents. The issuance by the County of the Acceptance Certificate shall not be construed to be acceptance by the County of any defective or inferior work, improper materials, or work not adhering to the requirements of the Contract Documents. The County will transmit copies of the Certificate of Acceptance of Final Inspection to the Contractor.

104.5 The County will make final payment to the Contractor after issuance of the Final Acceptance Certificate. Such final payment shall constitute full and complete payment to the Contractor for the Work.

ARTICLE 105. INTENTIONALLY OMITTED.

ARTICLE 106. SOFTWARE ESCROW SERVICES

106.1 Contractor shall provide or cause to have provided to the County, uninterrupted escrow services for the contract period. Escrow services shall be provided with no lapse in updates to the Materials. Such services shall be at the sole expense of the Contractor, at no cost to the County.

ARTICLE 107. SURVIVAL

107.1 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.

PROJECT SCHEDULE: SEE EXHIBIT 5

PROJECT PAYMENT SCHEDULE: SEE EXHIBIT 6



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

Contractor

By: [Signature]

Name: ARIAN BERTIE

Title: CFO

Date: 12/21/12

Attest: [Signature]
Corporate Secretary/Notary Public

Miami-Dade County

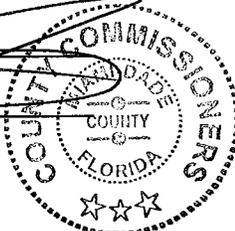
By: [Signature]

Name: Carlos A. Gimenez

Title: Mayor

Date: 2/25/13

Attest: [Signature]
Clerk of the Board



Corporate Seal/Notary Seal

Approved as to form and legal sufficiency

[Signature]
Assistant County Attorney





EXHIBIT 2 - SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENSE AGREEMENT ("AGREEMENT") IS MADE AND ENTERED INTO THIS ___ DAY OF DECEMBER, 2012 (THE "EFFECTIVE DATE") BY AND BETWEEN THE MIAMI-DADE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, HAVING ITS PRINCIPAL OFFICE AT 111 N.W. 1ST STREET, MIAMI, FLORIDA 33128 (HEREINAFTER REFERRED TO AS THE "COUNTY" OR "LICENSEE"), AND TRAPEZE SOFTWARE GROUP, INC., A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF ARIZONA, HAVING ITS PRINCIPAL OFFICE AT 8360 EAST VIA DE VENTURA, SCOTTSDALE, ARIZONA 85258 (HEREINAFTER REFERRED TO AS THE "CONTRACTOR" OR "LICENSOR" OR "TRAPEZE").

RECITALS

- A. County has acquired the license rights to use the Software, Third-Party Software, and Documentation (as defined below).
- B. Licensor desires to grant to the County and the County desires to obtain from the Licensor a license in accordance with Article 2 to use the Software, Third Party Software and Documentation solely in accordance with the terms and on the conditions set forth in this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

As used herein, capitalized terms shall have the meanings provided below. Capitalized terms which are used in this License Agreement but which are not defined below are defined in the context in which they are used, and shall have the meanings indicated by such use.

"Application Programming Interface (API)" is a set of computer programming rules intended to be used as an interface by software components to communicate with each other.

"Commercially Available Software" shall mean software offered for licensed use by third parties to the general public and utilized in the TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP) by the Licensor.

"Contributions" shall mean Confidential Information, as defined below, inventive contributions, works of authorship, or other materials contributed by a party to the development of the TOSRP.

"County Authorized Provider" shall mean a firm or individual approved by the County to provide services relating to the County's requirements.



“Deliverable” shall mean an item that is required to be developed, delivered, installed and incorporated into the system by the Contractor and presented to the Licensee as defined in the Scope of Services attached to Contract No. 746 as Exhibit 1.

“Documentation” shall mean any and all operating instructions, user documentation and other technical material related to the Software that are generally made available by the Contractor for use in connection with the Software, whether in print form, on CD-ROM, online or otherwise, including without limitation, customer reference manuals and installation, administrative and programmer guides. Documentation does not include sales literature, marketing literature and other similar items.

“Escrow Deposit” shall mean placement of Source Code, Object Code, and documentation for Software deposited with one or more parties who will ensure the safe keeping of these items and shall also release the items to the Licensee under specific defined conditions.

“Intellectual Property” shall mean information, systems, software, programs, processes, technology, services, methodologies, products, documentation, and any other materials or rights, tangible or intangible all relating to the TOSRP project.

“License Agreement” shall mean this Software License Agreement.

“Licensee” shall mean the County.

“Licensor” shall mean the Contractor.

“Object Code” shall mean the binary version of a computer program, produced by a compiler, assembler, or similar program, which contains a sequence of instructions and data derived from the Source Code.

“Pre-existing Work” shall mean work completed and owned by the Licensor that may be provided to Licensee for the TOSRP and which existed prior to the Notice to Proceed for the TOSRP Contract No. 746.

“Program” shall mean a set of instructions that directs a computer to perform some processing function or combination of functions.

“Project” shall mean the TOSRP project.

“Scope of Services” shall mean the services described in Exhibit 1 to Contract No. 746.

“Software” shall mean Contractor proprietary owned Software as identified in Schedule B -“List of Software and Interfaces” to the Software Maintenance and Support Agreement, as such Schedule may be amended from time to time by mutual agreement.

“Source Code” shall mean a series of instructions written in human readable format using a structured computer programming language, it also includes all appropriate programmer’s comments, data files and structures, macros, annotations and documentation.



"Systems" shall mean third party computer programs and third party hardware upon which the computer programs are run or stored.

"Third-Party Software" shall mean software developed by an organization or individual other than the two principals (Contractor and Licensee) involved in this Agreement and licensed by Contractor to Licensee pursuant to this Agreement.

ARTICLE 2. SOFTWARE LICENSE RIGHTS

- i. Contractor shall grant to Licensee a perpetual, nonexclusive, royalty-free, license right (a) to use, access, and display Software and Third Party Software for its internal business purposes as set forth in the Contract Documents in accordance with the "Operational License Characteristics" set forth in Schedule A. It is expressly understood and agreed to that in the event the Licensee wishes to increase the operational license characteristics associated with the license, the Licensee will pay any additional licensing fees and the additional hardware and installation services required, as agreed to by the parties.
- ii. The Contractor shall grant to Licensee a perpetual, non-exclusive, royalty free, license to use, and reproduce, all Documentation for its internal business purposes.
- iii. API License. The Deliverables consisting of interfaces to the Software, identified in Schedule B "List of Software and Interfaces" (the "API"), will be developed by Contractor in such a manner that will allow Contractor to add data elements to the API with respect to the use of the API with any other licensed software or systems that connect to the Software. The API shall be licensed in accordance with the Software license set forth above, except that for the avoidance of doubt Licensee may also utilize the data obtained through the API to function with or connect with any replacement Systems or any other internally developed software or systems. Notwithstanding the foregoing, Licensee shall not grant a third party direct access to the API but a third party may be granted access to the data generated through the API, or otherwise through the Software if such third party is certified pursuant to Contractor's business partner program (such certification shall not be unreasonably withheld).
- iv. Nothing contained in this Agreement shall be construed to restrict, impair or deprive Contractor and/or its suppliers of any of its ownership or proprietary interest or rights in technology, information or products that existed prior to the TOSRP.



- v. Any Pre-existing Works, (including all tools, documentation, and necessary knowledge to modify these Preexisting Works) which are required or necessary for the performance of the Software under this Agreement and that may be incidental to, or are intended to interact or operate with the Deliverables will be provided to Licensee as part of the Deliverables as follows: Contractor shall grant to Licensee a non-exclusive, perpetual, royalty-free, license to use each such Pre-existing Work.
- vi. Nothing in this Agreement shall be construed as granting to Contractor any right or license under any of Licensee's present or future patent rights or copyrights, or as granting to Contractor any right or license to use for any purpose other than those purposes expressly stated herein any of Licensee's data, systems, software or technical information or results received, discovered, or produced by Contractor in connection with its work for Licensee, except as may be required for Contractor to fulfill its obligations under this Agreement.
- vii. Nothing in this Agreement shall grant to Contractor any ownership interest in any data or information owned by Licensee. Contractor shall, upon request of Licensee, immediately and at any time, surrender to Licensee any data, materials or information, together with any copies thereof, which may be in the possession and/or control of Contractor in the form reasonably requested by Licensee.
- viii. Commercially Available Software: The Contractor shall facilitate County obtaining all required Commercially Available Software Licenses used within the TRANSIT OPERATIONS SYSTEM REPLACEMENT PROJECT (TOSRP) and will pass through any licenses and warranties obtained on behalf of the County by Contractor pursuant to this Agreement.
- ix. Software License Fees: In consideration of the license rights granted in this Agreement, the Contractor acknowledges that all requisite license fees are included in the prices as set forth in Exhibit 6 to Contract No. 746, "Payment Schedule".

ARTICLE 3. INTENTIONALLY OMITTED

ARTICLE 4. INTENTIONALLY OMITTED

ARTICLE 5. INTENTIONALLY OMITTED

ARTICLE 6. ESCROW

Licensor agrees to deposit in Escrow, in accordance with the Contract Terms and Conditions of the Escrow Agreement (the "Escrow Deposit"), all Source Code and Object Code for the Software. The Escrow Deposit shall be in accordance with the Escrow Agreement provisions. The Software Escrow Agreement is provided in Exhibit 4 to Contract No. 746.



ARTICLE 7. INTENTIONALLY OMITTED

ARTICLE 8. TERM AND TERMINATION

This Agreement shall become effective as of the effective date set forth above and shall remain in effect and renewable on a year-to-year basis until terminated by the County. Licensee may terminate this Agreement for cause in accordance with Article 14, subsequent to a thirty (30) day cure period, or convenience upon thirty (30) days prior written notice to Licensor.

ARTICLE 9. PROTECTION OF SOFTWARE

9.1 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. Additionally the Licensor acknowledges that all computer software in the County's possession is subject to Section 812.081 of the Florida Statutes. The County acknowledges its obligation to comply with Section 812.081 of the Florida Statutes.

9.2 Proprietary Rights: The Licensor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Licensor hereunder, including all copyright and other proprietary rights herein, which the Licensor as well as its employees, agents, subconsultants, and suppliers may use only in connection of the performance of Services under this Agreement.

9.3 Ownership: County further acknowledges that all copies of the Software, Source Code and Documentation in any form provided by the Licensor are the sole property of the Licensor. The County shall not have any right, title, or interest to any such Software, Source Code or Documentation or copies thereof except as provided in this Agreement.

ARTICLE 10. CONFIDENTIALITY

10.1 Confidentiality:

- a) All materials or data which contains employee information prohibited from release to the public may not, without the prior written consent of the County, be used by the Licensor or its employees, agents, subconsultants, or suppliers for any purpose other than for the benefit of the County, unless required by law ("County Confidential Information").
- b) . Neither the Licensor, nor its employees, agents, subconsultants, or suppliers ("Licensor Parties") may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such County Confidential Information without the prior written consent of the County. Additionally, the Licensor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals, subject to the provisions of Article 11.4, herein, provided that Licensor Parties are solely and directly responsible for such breach.

10.2 Maintenance of Confidential Information: The Licensor shall advise each of its employees, agents, subconsultants, and suppliers who may be exposed to such County



Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the County Confidential Information by any of its employees or agents, or subconsultants, or supplier's employees, present or former. In addition, the Licensor agrees to cooperate, and provide any commercially reasonable assistance necessary to ensure the confidentiality of the County Confidential Information.

10.3 Survival: Licensee's obligations under this Article 10 will survive the termination of this Agreement or of any license granted under this Agreement for whatever reason.

ARTICLE 11. WARRANTIES

11.1 Ownership: The Licensor represents that it is the owner of the entire right, title, and interest in and to Software, and that it has the sole right to grant licenses thereunder, and that it has not knowingly granted licenses thereunder to any other entity that would restrict rights granted hereunder except as stated herein.

11.2 Limited Warranty: Licensor represents and warrants to the County that the Software, when properly installed by the Licensor, or its agents, and used for the purposes stated in the Scope of Services, will perform as described in the Documentation for such Software for a period of **one year** from the date of System Acceptance ("Warranty Period").

11.3 Licensor's Sole Remedy: The Licensor's entire liability and the County's exclusive remedy shall be for the repair or replacement of the Software, provided the Licensor receives written notice from the County during the warranty period of a breach of warranty. Any replacement Software will be warranted for the remainder of the original warranty period or ninety (90) days, whichever is longer.

11.4 Limitation of Liability: COUNTY AND LICENSOR ACKNOWLEDGE AND AGREE THAT NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES.

ARTICLE 12. THIRD PARTY WARRANTIES

In addition to the foregoing warranties, the Contractor hereby assigns, if assignable, to the County, and the County shall have the benefit of, any and all subcontractors' and suppliers' warranties and representations with respect to the Third Party Software, Commercially Available Software and hardware provided hereunder. In the Contractor's agreements with subcontractors and suppliers, the Contractor shall make reasonable efforts to require such parties to (1) consent to the assignment of such warranties and representations to the County; (2) agree that such warranties and representations are enforceable by the County in its own name; and (3) furnish to the County, the warranties and obligations as set forth in Articles 70 "Warranties, Representations and Covenants" of the Contract.

ARTICLE 13. INDEMNIFICATION

Licensor shall indemnify, hold harmless and defend the County against any action brought against the County to the extent that such action is based on a claim that the



Software, as and when furnished, when used in accordance with this Agreement, infringes a United States copyright that is existing and issued as of the date of this Agreement, and Licensor shall pay all costs, settlements and damages finally awarded, provided that the County promptly notifies the Contractor in writing of any claim, gives the Licensor control of the defense and settlement thereof and provides all reasonable assistance in connection therewith. If any Software is finally adjudged to so infringe, or in Licensor's opinion is likely to become the subject of such a claim, the Licensor shall, either: (i) procure for the County the right to continue using the Software (ii) modify or replace the Software to make it non-infringing, or (iii) refund the fees paid, upon return of the Software at the County's discretion. Licensee shall have no liability regarding any claim arising out of: (i) use of the Software in combination with non-County software, data or equipment if the infringement was caused by such use or combination, (ii) use of third party software. THE FOREGOING STATES THE ENTIRE LIABILITY OF LICENSOR AND THE EXCLUSIVE REMEDY FOR THE COUNTY RELATING TO INFRINGEMENT OR CLAIMS OF INFRINGEMENT OF ANY COPYRIGHT OR OTHER PROPRIETARY RIGHT BY THE SOFTWARE.

ARTICLE 14. DEFAULT AND TERMINATION

14.1 Termination: 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.

- a) 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.
- b) 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 Licensor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

14.2 Events of Default: This Agreement may be terminated by either party if any of the following events of default occur: (1) if a party materially fails to perform or comply with this Agreement or any provision hereof; (2) if the Licensor becomes insolvent or bankrupt, or makes an assignment for the benefit of creditors.

14.3 Effective Date of Termination: Termination pursuant to Article 14.2 shall be effective thirty (30) days after notice of termination to the Licensor if the default has not been cured within such thirty (30) day period.

14.4 Obligations on Termination: If the County terminates this agreement for convenience, or the Agreement is terminated due to County defaults, the County shall cease use of the Materials within fourteen (14) days of such termination.



ARTICLE 15. PAYMENT

In consideration of the license rights granted in Article 2, Licensor acknowledges that all requisite license fees and implementation services fees are included in the unit prices purchased by Licensee as part of the TOSRP Contract No. 746 through the warranty period. Licensee shall be responsible for such fees in accordance to Schedule B "List of Software and Interfaces", attached hereto.

ARTICLE 16. ASSIGNMENT

This Agreement may be assigned by the Licensee as defined in the Contract Documents for Contract No. 746. However, none of the parties' rights or obligations hereunder may be assigned to any third party, including, without limitation, through U.S. Bankruptcy Code Chapter 11 reorganization, without prior written consent of the other party (which shall not be unreasonably withheld).

ARTICLE 17. FORCE MAJEURE

Neither party shall be liable to the other party for failure of or delay in performance of any obligation under this Agreement, directly or indirectly, owing to war, acts of terrorism, acts of God, epidemics, pandemics, war, sabotage, fires, storms, hurricanes, explosions, labor disputes, extensive power failure, embargoes, riots, strike and other events beyond its reasonable control. In the event that such failure or delay occurs, the affected party shall notify the other party of the occurrence thereof as soon as possible and the parties shall discuss the best way to resolve the event of force majeure.

ARTICLE 18. NOTICES

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

(1) To the Contract Manager:

Miami-Dade County
Internal Services Department (ISD) / Procurement Management Services (PMS)
111 N.W. 1st Street, Suite 1300
Miami, FL 33128-1974

Attention: Fred Simmons, Jr., CPPO

Phone: (305) 375 - 4259

Fax: (305) 375 - 1083

E-Mail: fred@miamidade.gov

(2) To the Contractor

Trapeze Software Group, Inc.
5800 Explorer Drive, 5th Floor



Mississauga, Ontario, L4W 5K9 Canada

Attention: Legal Department
Phone: (905) 629-8727
Fax: (905) 629-8408

And

Attention: Director of Sales
Phone: (905) 629-8727
Fax: (905) 629-8408

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 19. INTENTIONALLY OMITTED

ARTICLE 20. INSPECTOR GENERAL REVIEWS

20.1 Independent Private Sector Inspector General Reviews. Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Licensor 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 Licensor'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 Licensor, its officers, agents, employees, subconsultants, and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Licensor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Licensor or any third party.

20.2 Miami-Dade County Inspector General Review: According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below.

20.3 Inspector General Powers: 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 Licensor, 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 Licensor from the Inspector General or IPSIG retained by the Inspector General, the Licensor 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 Licensor'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 21. GOVERNING LAW

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

ARTICLE 22. LICENSOR OBLIGATIONS

As a requirement of this Agreement, the Licensor is obligated to comply with all applicable County ordinances and state statutes. The Licensor shall be a registered vendor with Miami-Dade County, ISD / PMS, for the duration of this Agreement. It is the responsibility of the Licensor 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. The following County Vendor Application and Affirmative Action place information can be downloaded from the following websites:

- a) Active County Vendor Registration and County Affidavits – the vendor registration application and associated affidavits can be downloaded from the following website: http://www.miamidade.gov/dpm/vendor_registration.asp;
- b) Affirmative Action Plan – the information pertaining to this program can be obtained online from the following website: <http://www.miamidade.gov/sba/faqs-affirm-action.asp>

ARTICLE 23. FUNCTIONALLY EQUIVALENT SOFTWARE

Subject to Licensee maintaining its annual maintenance fee payment obligations to Contractor, in the event the Contractor wishes to discontinue maintenance and support required in accordance with this Agreement, for the then current version of the Licensed



Software as set-forth in Schedule A of this Agreement, or any amendment thereto, the Contractor shall, upon prior written consent from the County, be required to provide to the County, a new version of the software if a new version has been made available to other Contractor's customers, which shall replace the previous version and perform the functions described in the related Documentation or any amendment thereto. Licensor will make commercially reasonable efforts to ensure the implementation of such new software shall not interrupt the business for which the system is installed. Subject to Licensee maintaining its annual maintenance fee payment obligations to Contractor, in the event the Contractor is providing Support of the then current version of the License Software being used by the County, the Contractor shall provide any new version of the License Software if the new License Software is generally made available to other Contractor's customers.

ARTICLE 24. ANNUAL APPROPRIATION

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

ARTICLE 26. ENTIRE LICENSE AGREEMENT

This Agreement and the terms and conditions of Contract No.746 constitute the entire agreement between the parties. This Agreement can only be modified in writing and signed by both Parties.

ARTICLE 27. SOFTWARE RELATED DOCUMENTATION

The Software-related Documentation ("Documentation") will consist of system administration manuals, user's manuals, and training materials available in electronic format.

The Contractor shall deliver to the County the Documentation in electronic format 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 for its internal business purposes.

ARTICLE 28. REMEDIES

The remedies provided herein are cumulative, and may be exercised either successively or concurrently.

ARTICLE 29. SOVEREIGN IMMUNITY

Nothing in this Agreement shall be construed or interpreted as consent by Licensee to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.



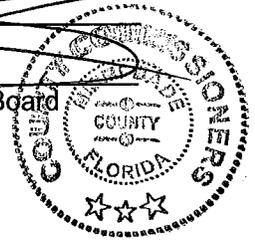
IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Licensors

By: [Signature]
 Name: BRIAN BEATTIE
 Title: CFO.
 Date: 12/21/12.
 Attest: [Signature]
 Corporate Secretary

Miami-Dade County

By: [Signature]
 Name: Carlos A. Gimenez
 Title: Mayor
 Date: 2/25/13
 Attest: [Signature]
 Clerk of the Board



Corporate Seal



Approved as to form and legal sufficiency

[Signature]
 Assistant County Attorney



EXHIBIT 3 - SOFTWARE MAINTENANCE & SUPPORT AGREEMENT

This Software Maintenance and Support Agreement commencing the day following the last day of the Warranty Period (as that term is defined in the Software License Agreement (Exhibit 2 of Contract No.746)). The term of this agreement shall be up to a nine year period; renewable each year at the sole discretion of the County.

BETWEEN:

Miami Dade County (County), a political subdivision of the State of Florida with a principal place of business at 111 NW 1st Street, Miami, Florida 33128

-and-

Trapeze Software Group, Inc., a corporation incorporated under the laws of Arizona, with a principal place of business at 8360 East Via de Ventura, Scottsdale, Arizona 85258 (hereinafter referred to as "Contractor" or "Licensor" or "Trapeze").

EVIDENCES THAT:

WHEREAS Contractor wishes to provide to the Customer, and the Customer wishes to obtain from Contractor, ongoing Maintenance and Support Services, as hereinafter described, for the Software listed in Schedule A to this Software Maintenance and Support Agreement (the "Agreement") and from time to time added to the Schedule pursuant to the terms of this Agreement;

IN CONSIDERATION OF the premises and the mutual agreements hereinafter contained, the parties agree as follows:

DEFINITIONS

When used in this Agreement, the following terms shall have the meanings specified below:

"Agreement Fees" means the fees as set forth in Section 1 of Schedule C ("Software Maintenance Pricing") of this Support Agreement.

"Contract Documents" means collectively these terms and conditions, the "List of Software and Interfaces" (Schedule B), the "Software Maintenance Pricing" (Schedule C), the Software License Agreement (Exhibit 2 to Contract No.746), the Software Escrow Agreement (Exhibit 4 to Contract No.746), and all associated addenda and attachments the Contractor's Proposal, and other attachments hereto and all amendments issued hereto.

"Contract Manager" means the County's Internal Service Department (ISD) Procurement Contract Officer.

"Days" means Business days.



"Documentation" means any and all operating instructions, user documentation and other technical material related to the Software that are generally made available by the Contractor for use in connection with the Software, whether in print form, on CD-ROM, online or otherwise, including without limitation, customer reference manuals and installation, administrative and programmer guides. Documentation does not include sales literature, marketing literature and other similar items.

"Maintenance Fee" means the fee payable for Maintenance Services, as set out in Schedule C "Software Maintenance Pricing" to this Agreement.

"Maintenance Services" means the services, in respect of the Software, described in Section 1 of this Agreement.

"Problem" means the failure and/or defect of Software to perform its intended functions as specified in the Contract and/or for the Software to be not available for normal services.

"Project Manager" means the Transit contact representative, or designee, for this Agreement.

"Permanent Fix" means a fully-tested and quality-controlled error correction for a Problem.

"Relief" means (i) an immediate solution or a fix for a Problem; or (ii) a Workaround.

"Software" means Contractor proprietary owned Software as identified in Schedule B - "List of Software and Interfaces" to this Agreement, as such schedule may be amended from time to time by mutual agreement.

"Workaround" means a procedural or process change, to be implemented by the County that temporarily circumvents a Problem, temporarily prevents the reoccurrence of a Problem, or reduces the impact of a Problem until such time as a Permanent Fix is implemented.



1. MAINTENANCE SERVICES

1.1 Warranty on Quality of Maintenance Services: Contractor warrants that it will provide Maintenance Services in a good and workmanlike manner by properly qualified individuals.

1.2 Contractor Obligations: Contractor shall provide the County with the following support and maintenance services for the products licensed by the County for the Transit Operations System Replacement Project (TOSRP) as identified in this Agreement subject to the County's payment of annual maintenance fees.

1.3 Telephone Support: For the term of this Agreement, the Contractor shall provide telephone support for calls from the County for Problems.

1.3.1 The County will generally contact the Contractor indicating the problem description and severity level classification as provided in Section 1.3.5 Maintenance, Support and Escalation. The severity level classification shall be determined by mutual agreement between the parties.

1.3.2 The Contractor shall, via telephone, **1)** provide live technical support (Live Support), excluding on-site support, for each severity level, **2)** respond to the County's report of Problems and begin work (Response Time), **3)** provide a Relief and/or a Permanent Fix to resolve the Problem (Resolution Time), and **4)** provide periodic updates of the resolution status (Status Frequency Update) within the timeframes stated in Section 1.3.5 Maintenance, Support and Escalation.

1.3.3 The Contractor shall make all commercially reasonable efforts to provide a Relief and/or a Permanent Fix in accordance with the Resolution Time stated below and in doing so shall use such internal resources as are reasonably necessary to work on the Problem until resolution. The Contractor shall log all Problems as a Site Problem Report (SPR) and assign a tracking number. The number is used to track the Problem through to final resolution. The SPR shall detail the Problem reported, such as description of the Problem, severity level and support staff assigned, tracking number and all other related information. Upon creation, the SPR shall be sent to the County via e-mail.

1.3.4 During the resolution stage in connection with all Problems, the Contractor shall assign a single point of contact to maintain communication, in accordance to the Frequency of Status Update in the Maintenance and Support Table (Section 1.3.5 -Table 2) with the County. When a resolution is available, the Contractor shall guide the County's staff through any necessary resolution, configuration or setup procedures. Upon resolution of the Problem, the County and the Contractor shall mutually agree to the closing of the SPR and confirmation of the closing shall be sent to the County via e-mail.



1.3.5: Maintenance, Support and Escalation

If an established goal is not met, the initial escalation will be to the Technical Team Lead. If the Technical Team Lead does not respond in a timely manner, the next escalation point for the County would be the next escalation as defined by the Escalation Table below. All resources can be contacted through the 1-877-411-8727 or cc@trapezegroup.com. The County will be apprised of current resources contact information as appropriate.

Table 1: Escalation Table

Escalation	Escalation Level
Call Center Operator	1
Technical Product Specialist	2
Technical Team Lead	3
Technical Account Manager	4
Customer Care Manager	5
Vice President, Customer Care	6
President	7

Table 2: Maintenance and Support Table

Severity Level	Definition	Availability (Live Support)	Response (Goal)	Resolution Time (Goal)	Status Frequency Updates	Escalation
1	A reported problem in the software, or one of its necessary components, has caused the software to cease functioning or has caused a complete system shutdown.	24 hours a day, seven days per week	Immediately	Continuous work until workaround found or resolved	One Hour	1,3,4,5
2	A reported problem in the software or one of its necessary components has caused a serious disruption of a major business function and cannot be temporarily solved by an alternative method or workaround.	8 am to 8 pm EST Monday to Friday (business day)	Within 2 hour	Continuous work until workaround found or resolved	Two Hours	1,3,4
3	A reported problem in the software or one of its necessary components for which a temporary workaround is readily known and available.	8 am to 8 pm EST Monday to Friday (business day)	Within 1 business day	Next interim build	Available through portal	1,3,4



4	A reported problem, question or request that is not included in the definitions of Priority 1, 2, or 3 and demands less immediate attention than said priorities	8 am to 8 pm EST Monday to Friday (business day)	Within 1 business day	Interim build	Available through portal	1,3
5	A problem of cosmetic nature.	8 am to 8 pm EST Monday to Friday (business day)	Within 1 business day	Next major release or upgrade	Available through portal	1,3
6	Training request	8 am to 8 pm EST Monday to Friday (business day)	Within 5 business days	Case by case details coordinated with client	Available through portal	1,3
7	Upgrades	8 am to 8 pm EST Monday to Friday (business day)	Within 5 business days	Implementation plan negotiated with client	Available through portal	1,3

1.3.6 **Email Support:** For the term of this Agreement, the Contractor shall provide support via email for emails from the County. The severity levels and the response times requirements set forth above for Maintenance and support are applicable to email support.

1.4 **Maintenance:** Subject to the County's payment of annual maintenance fees, Contractor will supply to the County, at no additional charge, any improvements, upgrades, or modifications to the Software that Contractor makes generally available. Any such improvements, upgrades, or modifications shall become part of the Software for all purposes of this Agreement. The County acknowledges and agrees that the Maintenance to be provided is limited to the most current version of the Software or the immediately preceding version providing that Contractor has supplied the County with such version(s).

Contractor shall be responsible for responding to service calls in accordance with the goals as set out in Table 2: Maintenance and Support Table herein. An account number will be assigned to the County and a service contact number will be provided upon completion of the work.

1.5 **Payments:** The County shall pay Contractor for services on an annual basis pursuant to Schedule C. The Contractor shall invoice the County for Maintenance and Support Fees annually, unless the County terminates Maintenance and Support Services for a subsequent Maintenance Period as provided herein. In the event the County terminates Maintenance and Support, the County shall be entitled to a pro-rated amount for the unused portion of the annual fee. All payments to the Contractor under this Agreement shall be payable in U.S. dollars.



1.6 Payment of Additional Services: The County shall make payment for additional services provided by the Contractor pursuant to Schedule C: "Additional Pricing". When requested by the County, the Contractor shall provide the requested additional services. Upon the County's request for such additional services, the County shall prepare a Statement of Work ("SOW") for the specific services that shall define in detail the work to be performed. Contractor shall submit a cost proposal including all costs pertaining to furnishing the County with the additional services at a rate identified in Schedule C "Additional Pricing" to perform such required services. Any required travel expenses will be in addition to the hourly rate. Contractor shall not commence any work described under the SOW until a purchase order has been provided by the County.

1.7 Support: Contractor agrees to provide the following software long term support and maintenance services during the term of this agreement:

- a) Contractor shall provide the County with updates to the Software to provide known error corrections by delivery of available patches via electronic communication and for download via the Internet.
- b) Provision of available minor updates (bundling of several error corrections in one version) for download via the Internet.
- c) Information via electronic communication (email) when new updates are available.
- d) Contractor shall provide the County with updates of the Software at the annual Software Maintenance prices identified in Schedule C of this agreement.

2. SOFTWARE MODIFICATIONS

2.1 Error Corrections and Updates: Contractor will provide the County with error corrections, bug fixes, patches or other updates to the Software referenced to the extent available in accordance with Contractor's release schedules for the term of this Agreement.

2.2 Software Enhancements or Modifications: The County may, from time to time, request that Contractor incorporate certain features, enhancements or modifications into the licensed Software. When requested by the County, the Contractor shall provide the requested system enhancements/modifications. Upon the County's request for such enhancements/modifications the County shall prepare a Statement of Work ("SOW") for the specific Project that shall define in detail the Services to be performed. Contractor shall submit a cost proposal including all costs pertaining to furnishing the County with the enhancements/modifications at a rate identified in Schedule C "Software Maintenance Pricing" to perform such required services. Any required travel expenses will be in addition to the hourly rate. Contractor shall not commence any work described under the SOW until a purchase order has been provided by the County.

- a) After the SOW has been accepted a detailed requirements and detailed design document shall be submitted by the Contractor 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. Contractor shall retain the rights to utilize such enhancements or modifications and the enhancement and modifications shall be deposited into Software Escrow Account. Notwithstanding the foregoing, performance of any such modifications shall not compromise Contractor's warranty obligations.

- b) Following the County's acceptance of all enhancements/modification, Contractor shall provide the County with written confirmation of the date the enhancements/modification were applied to the Licensed Software, and any and all Documentation relating to the Licensed Software and or enhancements/modification thereto and date of deposit to Escrow.

3. LIMITATION OF LIABILITY

COUNTY AND LICENSOR ACKNOWLEDGE AND AGREE THAT NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES.

4. ACCESS TO INFORMATION

In relation to this Agreement, the County shall be responsible to provide Contractor the following:

4.1 Access to Technical Information: The County shall grant Contractor or its representative(s) access to technical information that Contractor might require from time to time.

4.2 On-site Facilities: The County will provide the appropriate escort to access physical equipment as needed.

5. CONTACT REPRESENTATIVES

5.1 County Contact Representatives: The County contact representative shall be the Transit Project Manager or designee. The County may, by notice in writing to Contractor, substitute other employees or agents as its designated representatives for purposes of this section.

5.2 Contractor Contacts: Initial requests for technical support should be directed to the designated telephone contact number that will be made available to the Project Manager prior to commencement of installation.

6. COUNTY RESPONSIBILITIES

6.1 Operating Environment: The County is responsible for maintenance agreements for all operating environment components in which the Software or Third-Party Software is to function.



This project is funded by the American Recovery & Reinvestment Act (ARRA)

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

Contractor

By: [Signature]

Name: BRIAN BEATTIE

Title: CFO

Date: 12/21/12

Attest: [Signature]
Corporate Secretary

Miami-Dade County

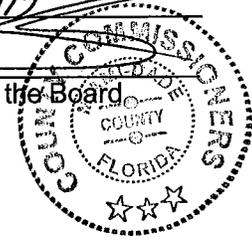
By: [Signature]

Name: Carlos A. Gimenez

Title: Mayor

Date: 2/25/13

Attest: [Signature]
Clerk of the Board



Corporate Seal



Approved as to form and legal sufficiency

[Signature]
Assistant County Attorney



This project is funded by the American Recovery & Reinvestment Act (ARRA)

EXHIBIT 4 - SOFTWARE ESCROW AGREEMENT

This Software Escrow Agreement (the "Agreement") is effective _____, 2012 between Trapeze Software Group, Inc. (hereinafter "TRAPEZE" or the "Depositor"), and Miami-Dade County (hereinafter "the County" or the "Beneficiary"), and Escrow Associates, LLC (the "Escrow Agent"). For purposes of this Agreement, TRAPEZE, the County, and the Escrow Agent may be referred to singularly as a "Party" and collectively as the "Parties".

WHEREAS, Depositor has entered into a software license agreement dated _____ (the "License", included as Exhibit 2 to Contract No.746) with the County (the "Beneficiary") wherein Depositor has licensed the use of certain Depositor Software and materials outlined in Schedule E herein (the "Materials") in connection with development, production and operation of the Transit Operations System Replacement Project (TOSRP) (the "Transit Operations System Replacement Project") pursuant to the contract between Depositor and the County (the "Transit Operations System Replacement Project (TOSRP) Contract"); and

WHEREAS, Depositor wishes to protect its Materials under Florida law while providing the County with access to the Materials in the event that certain circumstances described in this Agreement occur; and

WHEREAS, Depositor and the County wish to deposit such Materials in escrow (the "Escrow Deposit") to be held by Escrow Agent in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises, mutual and covenants herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Appointment of Escrow Agent and Escrow Fees

Depositor and the County hereby appoint Escrow Associates, LLC as Escrow Agent to hold the Materials, as defined herein, in accordance with the terms and conditions of this Agreement, and Escrow Agent agrees to act in such capacity.

In consideration for the services to be performed hereunder, Depositor shall pay to Escrow Agent a fee of \$ _____ dollars. In the event of non-payment of the escrow fee, Escrow Agent shall give Depositor sixty (60) day notice of default. Escrow agent shall also send such notice to the Beneficiary as a notice of default. In the event the sixty (60) day notice period elapses without Escrow Agent having received payment, Escrow Agent shall notify the County of such failure by Depositor, and shall allow thirty (30) days for remedy. If after such period, and any extensions of time which may be granted by Escrow Agent have elapsed and Escrow Agent



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has not received payment, Escrow Agent shall have the right, without further notice being required and without liability to any Party whatsoever, to terminate this Agreement.

2. Materials Deposited in Escrow

Depositor agrees to deposit with Escrow Agent one copy of all the constituent elements of the Materials, including any revisions, updates and modifications as may be made by the Depositor, but not limited to, text, data, images, animation, graphics, video and audio segments, and source and object code and user and system documentation.

Depositor represents:

- a) It lawfully possesses and has full legal ownership of all Materials;
- b) With respect to all of the Materials presented to Escrow Agent, Depositor has the right and authority to grant to Escrow Agent the rights as provided in this Agreement;
- c) As of the effective date of this Agreement, the Materials are not the subject of any lien or encumbrance; however, any liens or encumbrance made after the execution of this Agreement will not prohibit, limit, or alter the rights and obligations of the Escrow Agent under this Agreement;
- d) The Materials are readable and useable in their current form and if any portion of the Materials is encrypted, the decryption tools and decryption keys necessary to provide the deposited materials in a clear text format have also been deposited in escrow.

Prior to the delivery of the Materials, Depositor shall conspicuously label for identification each document, disk, or other tangible media upon which the Materials are written or stored. Depositor shall complete Schedule E to this Agreement by listing each tangible media by the item label description, the type of media and the quantity. Schedule E shall be signed by an authorized representative of Depositor and delivered to Escrow Agent with the Materials. Unless and until Depositor makes the initial deposit with Escrow Agent, Escrow Agent shall have no obligation with respect to this Agreement, except the obligation to notify the County regarding the status of the account as required herein.

3. Modifications to Materials to be Deposited

Depositor may, from time to time, add to, improve and modify the Materials used by the County in connection with the TOSRP project. Depositor agrees to deposit or cause to be deposited with the Escrow Agent, one copy of any additions, updates, and modifications to the Materials.

If additions, updates or modifications are made to the Materials, a deposit to the Materials shall be added within sixty (60) days of the end of each calendar quarter in which any material



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modification, upgrade or new release of the Materials occurs. In the event of default or termination, the Escrow Materials must be fully updated, including any additions and modifications to the Materials.

4. Independent Verification of Deposited Materials

Prior to the initial deposit to escrow, subsequent to any additional deposit, subsequent to the modification of previously deposited material, and at reasonable intervals during the term of this escrow agreement, the County shall have the right to engage an independent reviewer acceptable to Depositor to analyze the Escrow Deposit to ensure that the Escrow Deposit complies with Depositor's deposit obligations. The County shall pay all third-party costs associated with this analysis; provided, however, that if the analysis demonstrates that Depositor has failed to fulfill its deposit obligations, then Depositor shall bear all such costs. In any event, Depositor shall provide the County and its reviewer(s), at Depositor's expense, with reasonable assistance in such analysis of the Escrow Deposit.

5. Release and Delivery of Materials by Escrow Agent

The occurrence of any of the following events ("Release Events") shall provide to the County the right to request that the Escrow Agent release and deliver the Materials held in escrow to the County:

- a. The issuance of a final judgment of a court of competent jurisdiction or a final award of an arbitration panel finding that Depositor has committed a material breach of its support obligations under the Software License Agreement or depositor's material failure to carry out support, maintenance or similar obligations under terms of the TOSRP Contract, any exercised options to the TOSRP Contract, the Software License or the Software Maintenance and Support Agreement, which breach remains uncured by Depositor thirty (30) days following such issuance.
- b. Depositor's unauthorized assignment, either directly or indirectly (whether by merger, acquisition or otherwise), of support, maintenance or similar obligations imposed on it pursuant to the License to another company considered by The County, in its reasonable discretion, to be unsatisfactory.
- c. Entry of an order for relief for Depositor under the United States Bankruptcy Code or any similar proceeding initiated under the law of any other country or province;
- d. The making by Depositor of a general assignment for the benefit of its creditors;
- e. The appointment of a general receiver or trustee in bankruptcy of Depositor's business or property;



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- f. Action by Depositor under any state insolvency or similar law for the purpose of its bankruptcy, reorganization or liquidation.

Filing for Release: If a Release Event occurs, the County shall provide to the Escrow Agent and Depositor written notice of the occurrence of the Release Event and a request for the release of the Materials. Such notice shall be signed by the County.

Contrary Instructions: From the date the Escrow Agent mails the notice requesting release of the Materials, Depositor shall have thirty (30) days to deliver to the Escrow Agent contrary instructions ("Contrary Instructions"). Contrary Instructions shall mean the written representation by Depositor that a Release Event has not occurred or has been cured. Contrary Instructions shall be signed by Depositor on company letterhead. Upon receipt of Contrary Instructions, the Escrow Agent shall promptly send a copy to the County. Additionally, the Escrow Agent shall notify both Depositor and the County that there is a dispute to be resolved relating to the release. The Escrow Agent will continue to store the Materials without release pending (a) joint instructions from Depositor and the County; (b) dispute resolution pursuant to the Terms and Conditions of Contract 746; or (c) an order from a court of competent jurisdiction.

Release of Deposit: If the Escrow Agent does not receive Contrary Instructions from Depositor, the Escrow Agent shall release the Materials to the County. However, the Escrow Agent is entitled to receive any fees due the Escrow Agent before making the release. Copying expense will be chargeable to The Depositor. This Agreement will terminate upon verification by the County of the released Materials, and the functionality as required by the System.

Right to Use Following Release: Unless otherwise provided in the License Agreement, upon release of the Materials, the County agrees to use the Materials only as permitted under the Software License Agreement.

Restrictions on Use: The following restrictions shall apply to the Materials delivered to the County:

- (i) The County shall keep the Materials in a secure, safe place when not in use;
- (ii) The County agrees to use the Materials only as permitted under the Software License Agreement ;
- (iii) The County shall be obligated to maintain the confidentiality of the released Materials in accordance with Section 12 below;
- (iv) Upon release from escrow, The County (and its Authorized Providers) shall have the right to use, copy, and modify the Materials, in order to support and expand



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the TOSRP, subject to all license restrictions. Any License Fee obligations owed for increased use of the System shall “sunset” upon escrow release.

6. Confidentiality and Record Keeping

Prior to this Agreement becoming effective, Escrow Agent must enter into a Non-Disclosure Agreement (the “NDA”) with Depositor pursuant to which the Escrow Agent shall strictly maintain the confidentiality of all Materials. The executed NDA shall be attached to this Agreement as Exhibit 9.

7. Right to Make Copies

Escrow Agent shall have the right to make copies of the Materials as reasonably necessary to perform its obligation within this Agreement. Escrow Agent shall also notify Depositor and the County of any requests to copy the Materials. Escrow Agent shall ensure that all copyright, nondisclosure, and other proprietary notices and titles contained on the Materials are accurately and prominently displayed onto any copies made by Escrow Agent. With all Materials submitted to Escrow Agent, Depositor shall provide any and all instructions as may be necessary to duplicate the Materials, including, but not limited to, the hardware and/or software needed. Any copying expenses incurred by Escrow Agent as a result of a request to copy will be borne by the Party requesting the copies. Except as provided for in this Agreement, Escrow Agent shall not make the Materials available for either review or copying by third parties without written approval from Depositor and the County.

8. Term and Termination

The term of this Agreement shall commence on the date this Agreement is fully executed by the Parties and shall continue in full force and effect so long as Depositor is performing the TOSRP Contract, unless this Agreement is terminated as herein set out. Upon the commencement of this Agreement, Depositor shall deliver to Escrow Agent the Materials to be deposited under this Agreement.

The initial term of this Agreement is for a period of one (1) year. Thereafter, this Agreement shall automatically renew from year-to-year for as long as Depositor is performing the TOSRP Contract unless: (i) Depositor and the County instruct the Escrow Agent in writing that the Agreement is terminated; or (ii) Escrow Agent terminates this Agreement, for any reason, other than nonpayment, by providing Depositor and the County sixty (60) days written notice of its intent to terminate this Agreement.

In the event, for whatever reason, the Agreement between Escrow Agent and Depositor is terminated or expires, the Depositor shall within thirty (30) calendar days enter into a new Escrow Agreement. If no new Escrow Agreement is established, the Escrow Agent shall proceed to release all deposits as though Miami-Dade County had requested delivery of the Deposited Materials. At all times, Depositor must continue to update the escrowed material as mandated by Section 4 – “Modifications to Materials to be Deposited,” of this Agreement.

9. Survival of Terms Following Termination

Upon termination of this Agreement, the following provisions of this Agreement shall survive:
a. The obligation to pay Escrow Agent any fees and expenses due;



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- b. Any provisions in this Agreement which specifically state they survive the termination of this Agreement.

10. Dispute Resolutions shall be in accordance with Article 69 of the Contract.

11. Controlling Law: This Agreement is to be governed and construed in accordance with the laws of the State of Florida, without regard to its conflict of law provisions.

12. General Provisions

Entire Agreement: This Agreement, which includes Schedule E herein, embodies the entire understanding between the Parties with respect to its subject matter and supersedes all previous communications, representations or understandings, either oral or written. No amendment or modification of this Agreement shall be valid or binding except in writing and signed by the Parties.

Notices: All notices, invoices, payments, deposits and other documents and communications shall be given to the Parties at the addresses specified herein. It shall be the responsibility of the Parties to notify each other as provided in this Section in the event of a change of address. Any correctly addressed notice or last known address of the Party to be notified that is relied on herein that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be notified as provided herein shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities by mail, through messenger or commercial express delivery services. Unless otherwise provided in this Agreement, all documents and communications may be delivered by First Class mail.

Severability: In the event any provision of this Agreement is found to be invalid, voidable, or unenforceable, the Parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity, voidability, or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

Successors and Assigns: This Agreement shall be binding upon and shall enure to the benefit of the successors and assigns of the Parties. However, Escrow Agent shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor unless Escrow Agent receives clear, authoritative and conclusive written evidence of the change. Notice of any succession to or any assignment to this Agreement shall be provided to all Parties.

Waiver: Any term of this Agreement may be waived in writing by the Party entitled to the



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suit or proceeding against the County for the failure to make disclosure of the Software as provided under Chapter 119, Public Records Law; or other laws requiring disclosure by the County.

ii) In the event Depositor elects to prevent disclosure as above provided, Depositor agrees at its expense to protect, defend and indemnify the County against any claim, demand, action, proceeding, loss, liability, cost and expense (including court costs and reasonable fees of attorneys and other professionals) incurred or suffered by the County as a result of any claim against the County for the failure to make disclosure of the Software as provided under Chapter 119, Public Records Law, or other laws requiring disclosure by the County.

iii) Nondisclosure by the County shall not apply to information that:

- a. Is or becomes known to the public without fault or breach on the part of Depositor;
- b. Depositor regularly discloses to third parties without restriction on disclosure; or
- c. The County receives from a party other than Depositor without restriction on disclosure.



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IN WITNESS WHEREOF, The Parties have made and executed this Agreement on the respective date under each signature: Depositor, signing by and through its _____, duly authorized to execute same and MIAMI-DADE COUNTY, signing by The Mayor, or his designee, and authorized to execute same by Board action on the 7th day of Mar., 2013

ATTEST:

MIAMI-DADE COUNTY

Carlos A. Gimenez, Mayor

By [Signature] _____, 26 day of February, 2013

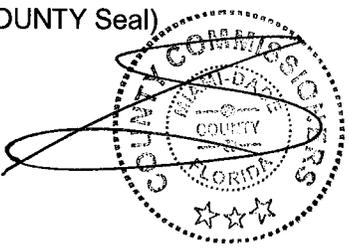
Lester Sola, Director, Internal Services Department

[Signature] _____

Approved as to form and legal sufficiency by [Signature] County Attorney

(THE COUNTY Seal)

ATTEST:



Witness

[Signature]

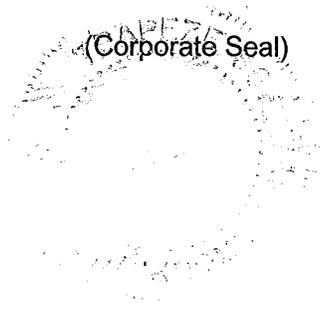
DEPOSITOR

[Signature] _____
Signature

BRIAN BEATTIE, CFO
Printed Name and Title

21 DAY OF DECEMBER, 2012.

(Corporate Seal)





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AS TO DUTIES OF ESCROW AGENT ONLY:

ESCROW AGENT:

By: _____

Name: _____

Title: _____



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SCHEDULE E – SOFTWARE AND INTERFACES

The following table is a sample list of all the Depositor Supplied Software to be escrowed in accordance with the provisions specified in the Software Escrow Agreement of this Contract.

Software Components

- Imported Schedule Data Support
- Bidding Module
- Web-based bidding module
- Dispatching Module
- Driving rules (FDOT and APTA)
- Vehicle Assignment and Vehicle Availability Modules
- Workforce Management Module
- Absences and Disciplines Module
- Performance and Profile Module
- Workforce Awards Module
- Timekeeping Module
- Employee Self-Service Module
- Service Incidents and Interruptions Module
- County Specific Reports

INTERFACES (“API”)

Fixed-Route (FX) Schedule Data Import
CAD/AVL
Random Drug and Alcohol Substance Abuse System
Medical Scheduler
Bus Accidents and Incidents System (BAIS)
Enterprise Asset Management System (EAMS)
Employee Check-in & Check-out Devices – Contactless Smart Card Readers (CSCR) & CUBIC encoded Smart cards
Info-COM
Automatic Passenger Counter (APC)
Time and Leave Payroll System
Drivers’ License Status Verification with Florida Department of Highway Safety and Motor Vehicles (DHSMV)
Interactive Voice Response (IVR)
Progressive Discipline System (PDS)
Employee Pictures System
Electronic Document Management System (EDMS)
Data exchange and data access programs