

CIVIL PROCESS SOLUTION

THIS AGREEMENT ("AGREEMENT") IS MADE AND ENTERED INTO BY AND BETWEEN MIAMI-DADE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, HAVING ITS PRINCIPAL OFFICE AT 111 N.W. 1ST STREET, MIAMI, FLORIDA 33128 (HEREINAFTER REFERRED TO AS THE "**COUNTY**"), AND TELEOSOFT, INC., A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF PENNSYLVANIA, HAVING ITS PRINCIPAL OFFICE AT 1700 7TH AVENUE, SUITE 150, YORK, PA 17403 (HEREINAFTER REFERRED TO AS THE "**CONTRACTOR**"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide a Civil Process Solution, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No.887 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated January 13, 2014, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

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

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

ARTICLE 1. DEFINITIONS

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

- a) The words "Contract" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), all other appendices and attachments hereto, all amendments issued hereto, RFP No.887 and all associated addenda, and the Contractor's Proposal.
- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.

- d) The word "Contractor" to mean Teleosoft, Inc. and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- i) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- j) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- k) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- l) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.
- m) The words "Solution" to mean the complete Civil Process Solution inclusive of all software licenses, equipment, devices, and associated services as defined within the Scope of Services (Appendix A).

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A), 3) the Price Schedule (Appendix B), 4) the Acceptance Criteria (Appendix C), 5) the Software Escrow Agreement (Appendix D), 6) Miami-Dade County's RFP No.887 and any associated addenda and attachments thereof, and 7) the Contractor's Proposal.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such

agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.

- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

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

ARTICLE 5. CONTRACT TERM

5.1 The Agreement shall become effective on the date that is it is signed by the County or the Contractor, whichever is later and shall be for the duration of five (5) year(s). The County, at its

sole discretion, reserves the right to exercise the option to renew this Agreement for two (2) additional five (5) year periods.

5.2 Extension. The County also reserves the right to exercise its option to extend this Agreement for up to one hundred-eighty (180) calendar days beyond the current Agreement period or beyond any of the renewals. The County will notify the Contractor in writing of the extension. This Agreement may be further extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

ARTICLE 6. GRANT OF LICENSE

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

6.2 Contractor grants the County a limited, perpetual, non-transferable, non-exclusive license to use the licensed Software Solution and Documentation in accordance with the terms of this Agreement. Such license shall not be construed to be any license to source code for any of the Solution Software

ARTICLE 7. WARRANTIES

7.1 Ownership. The Contractor represents that it is the owner of the entire right, title, and interest in and to the Solution software and operating components, 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.

7.2 Limited Warranty. Contractor represents and warrants to the County that the Solution, when properly installed by the County and used with the Designated Equipment, will perform substantially as described in Contractor's then current Documentation for such Software for a period of one year from the date of final Solution acceptance.

7.3 Limitations. Notwithstanding the warranty provisions set forth in Section 7.2 above, all of Contractor's obligations with respect to such warranties shall be contingent on County's use of the Software in accordance with this Agreement and in accordance with Contractor's instructions as provided to the County in the Documentation, as such instructions may be amended, supplemented, or modified by the Contractor from time to time. The Contractor shall have no warranty obligations with respect to any failures of the Solution which are the result of accident, abuse, misapplication, or extreme power surge.

7.4 Contractor's Sole Remedy. The Contractor's entire liability and the County's exclusive remedy shall be, at the County's option, either (a) return of the price paid or (b) repair or replacement of the Solution; provided the Contractor receives written notice from the County during the warranty period of a breach of warranty. Any replacement made for the Solution will be warranted for the remainder of the original warranty period or one hundred and eighty (180) days, whichever is longer.

7.5 Limitation of Liability. COUNTY ACKNOWLEDGES AND AGREES THAT THE CONSIDERATION WHICH THE CONTRACTOR IS CHARGING HEREUNDER DOES NOT INCLUDE ANY CONSIDERATION FOR ASSUMPTION OF THE RISK OF THE COUNTY'S

CONSEQUENTIAL OR INCIDENTAL DAMAGES WHICH MAY ARISE IN CONNECTION WITH COUNTY'S USE OF THE SOFTWARE AND DOCUMENTATION.

- a) Any provision herein to the contrary notwithstanding, the maximum liability of Contractor to any person, firm or corporation whatsoever arising out of or in the connection with any license, use or other employment of any Solution delivered to the County hereunder, whether such liability arises from any claim based on breach or repudiation of Agreement, warranty, tort or otherwise, shall in no case exceed the actual price paid to the Contractor by the County for the Solution whose license, use, or other employment gives rise to the liability.

ARTICLE 8. NOTICE REQUIREMENTS

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

(1) To the County

- a) to the Project Manager:

Miami-Dade County
Police Department
9105 NW 25th Street, Room 1070
Miami, FL 33172

Attention: Jose Benrey
Phone: (305) 471-1848
E-mail: ibenrey@mdpd.com

and,

- b) to the Contract Manager:

Miami-Dade County
Internal Services Department
Procurement Management Services Division
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974

Attention: Dakota Thompson
Phone: (305) 375-2356
Fax: (305) 375-5688
E-mail: Dakota@miamidadegov

(2) To the Contractor

Teleosoft, Inc
1700 7th Avenue, Suite 150
York, PA 17403

Attention: Luke Gatchell

Phone: (717) 747-2980
Fax: (866) 894-2784
E-mail: luke.gatchell@teleosoft.com

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

ARTICLE 9. DELIVERY

9.1 Delivery of the Solution shall be according to Appendix A "Scope of Services" and contingent upon final acceptance by the County.

9.2 Documentation. The Contractor shall provide electronic copies of the associated Solution Documentation as provided by the developer of the Solution to the County upon final acceptance of the Solution.

ARTICLE 10. SUPPORT AND MAINTENANCE SERVICES

Contractor shall provide the County with technical support and maintenance services in the manner outlined in Appendix A, "Scope of Services" for the Solution throughout the term of this Agreement, including any options or extensions exercised by the County.

ARTICLE 11. PROTECTION OF SOFTWARE

11.1 No Reverse Engineering. The County agrees not to modify, reverse engineer, disassemble, or decompile the Software, or any portion thereof.

11.2 Ownership. County further acknowledges that all copies of the Software Solution 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 or copies thereof except as provided in this Agreement, and further shall secure and protect all Software and Documentation consistent with maintenance of Contractor's proprietary rights therein.

ARTICLE 12. SOFTWARE MODIFICATIONS / OPTIONAL SERVICES

12.1 Software Enhancements, Modifications, or Optional Services. The County may, from time to time, request that the Contractor incorporate certain features, enhancements, or modifications into the Solution or require additional professional services outside the Scope of Services outlined within "Appendix A". When requested by the County, the Contractor shall provide the requested solution 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. The Contractor shall submit a cost and/or temporary revenue sharing proposal including all costs pertaining to furnishing the County with the enhancements/modifications.

- a) After the SOW has been accepted a detailed requirements and detailed design document shall be submitted illustrating the complete financial terms that govern the SOW, proposed Project staffing, anticipated Project schedule, and other information relevant to the Project. Each SOW executed hereunder shall automatically incorporate the terms and conditions of this Agreement. Such enhancements or modifications shall

become the property of the County. Notwithstanding the foregoing, performance of any such modifications shall not compromise the Contractor's warranty obligations.

- b) Following the County's acceptance of all enhancements/modification, the Contractor shall provide the County, if so requested with written confirmation of the date the enhancements/modification was applied to the Solution, and any and all Documentation relating to the Software and or enhancements/modification thereto.

ARTICLE 13. IMPLEMENTATION SERVICES

- a) The County shall accept or reject the Solution and/or Equipment within fifteen business (15) days of receipt unless otherwise provided elsewhere in this Agreement.
- b) If the Contractor fails to provide deliverables within the time specified or if the Solution and/or Equipment delivered fails to conform to the requirements or are found to be defective in material or workmanship, then the County may reject the delivered Solution and/or Equipment or may accept any item of Solution and/or Equipment and reject the balance of the delivered Solution and/or Equipment. The County shall notify Contractor of such rejection in writing and specify in such notice, the reasons for such rejection. Contractor agrees to deliver a fix or workaround replacement for the Solution and/or Equipment for such items of rejected Solution and/or Equipment within fifteen (15) business days of Contractor's receipt of the County's rejection notice.
- c) The Contractor shall bear the risk of loss or damage to delivered Solution and/or Equipment until the time the Project Manager certifies that the Solution(s) has successfully completed the Solution Acceptance test whether such loss or damage arises from acts or omissions (whether negligent or not) of the Contractor or the County or from any other cause whatsoever, except loss or damage arising solely from the negligence or willful acts of the County.
- d) Contractor agrees to install the Solution at the County's facilities. Contractor agrees to commence installation of the Solution according to "Appendix A" Scope of Services and the associated Implementation Schedule unless a different time for implementation is otherwise mutually agreed upon by the parties hereto. All implementation services will be performed during normal business hours. Whenever possible, however some services to be provided may be required outside of normal business hours to accommodate County operations. Work to be performed outside normal business hours will be mutually agreed by both parties. Contractor shall diligently pursue and complete such implementation services without interruption and in accordance with the Implementation Schedule, so that such Solution is in good working order and ready for use by the dates set forth in the Schedule.
- e) Contractor agrees to do all things necessary for proper implementation of the Solution and to perform its implementation obligations hereunder in an orderly, skillful and expeditious manner, with sufficient labor and materials to ensure efficient and timely completion of such obligations. If applicable, Contractor shall coordinate with the Project Manager all work with all other Contractors and/or County personnel performing work to complete Solution installation. The County shall be responsible for resolving all disputes relating to Site access between Contractor and/or County personnel. Contractor shall provide all materials necessary to properly implement the Solution. The County shall attempt to provide reasonable working and secure storage space for the performance by

Contractor of the implementation services described herein.

- f) Unless otherwise agreed to by the County, Contractor agrees as part of the implementation to perform all required services to successfully achieve all objectives set forth in the scope of work, including, but not limited to, (a) solution configuration; (b) interface development; (c) software testing; (d) acceptance and user acceptance testing; (e) training; (f) cooperating with all other vendors supplying peripheral or ancillary equipment that will interface with the Solution; and (g) any additional services necessary to ensure Contractor's compliance with this Article 12.
- g) Solution testing shall consist of the tests described in the Scope of Services, "Appendix A" which are to be conducted collectively by the Contractor and the County. The purpose of these tests is to demonstrate the complete operability of the Solution in conformance with the requirements of the Contract. This will include an actual demonstration of all required Solution functionality. All tests shall be in accordance with test plans and procedures prepared by Contractor and previously approved by the County. In the event of any outstanding deficiencies at the conclusion of installation testing, as determined by the County, Contractor shall be responsible for instituting necessary corrective measures, and for subsequently satisfactorily demonstrating and/or re-demonstrating solution performance.

ARTICLE 14. TESTS

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

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

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

- Contractor's Project Manager will provide written notice to the County Project Manager of modifications, fixes, enhancements, and/or new releases of the software available for testing.
- The Contractor's Project Manager will coordinate all user acceptances testing dates, acceptance criteria, and training for the new functionality for the test group.
- The County will be granted five (5) business days or other timeframe agreed to by both parties in writing to perform testing based on the outlined functionality being delivered to the County on the Acceptance Criteria sign off sheet.
- The County's Project Manager will provide the Contractor with written notice of acceptance (sign-off) or rejection (with documented material nonconformities in the

functionality) within 5 business days, unless more time is needed, in which case the County will notify the Contractor in writing accordingly.

- Deficiencies found will be noted on the Acceptance Criteria sign off sheet and the Contractor will be provided an opportunity to correct the issues. The Contractor will be required to provide the County with an updated timeline and work around (fix) within three (3) business days unless additional time is requested in writing and agreed by both parties.
- Once the release is accepted, the functionality will be moved into the production module. And updated documentation will be provided to the County.

ARTICLE 15. FEES AND PAYMENT

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

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

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

15.4 Invoices. All invoices issued by the Contractor, shall be supported by receipt bills or other documents reasonably required by the County. Invoices shall show the County's Agreement number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County 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. Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade Police Department Fiscal Administration Bureau
Accounts Payables Section

9105 NW 25 Street, #3049
Doral, FL 33172

Attn: Nicholas Santos

Phone: (305) 471-2531
Fax: (305) 471-2996

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

ARTICLE 16. INDEMNIFICATION AND INSURANCE

Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

The Contractor shall furnish to the Internal Services Department / Procurement Management Services, 111 NW 1st Street, Suite 1300, Miami, Florida 33128-1989, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the Provider as required by Florida Statute 440.
- B. Commercial General Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
- D. Professional Liability Insurance in the amount of \$1,000,000 per claim.

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

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength by Best's Insurance Guide, published by

A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

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

CERTIFICATE HOLDER MUST READ:

**MIAMI-DADE COUNTY
111 NW 1ST STREET
SUITE 2340
MIAMI, FL 33128**

ARTICLE 17. MANNER OF PERFORMANCE

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

- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 18. EMPLOYEES OF THE CONTRACTOR

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

ARTICLE 19. INDEPENDENT CONTRACTOR RELATIONSHIP

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

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

ARTICLE 20. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

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

with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Mayor's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Mayor within 10 days of the occurrence, event or act out of which the dispute arises.

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

ARTICLE 21. MUTUAL OBLIGATIONS

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

ARTICLE 22. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

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

ARTICLE 23. AUDITS

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

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

ARTICLE 24. SUBSTITUTION OF PERSONNEL

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

ARTICLE 25. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

ARTICLE 26. SUBCONTRACTUAL RELATIONS

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the

satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.

- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County in the event the County finds the Contractor in breach of this Contract, permitting the County to request completion by the Subcontractor of its performance obligations under the subcontract. The clause shall include an option for the County to pay the Subcontractor directly for the performance by such Subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

ARTICLE 27. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

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

ARTICLE 28. SEVERABILITY

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

ARTICLE 29. TERMINATION AND SUSPENSION OF WORK

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years

in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

- d) In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor.
- e) In the event that the County exercises its right to terminate this Agreement, the Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
 - i. stop work on the date specified in the notice ("the Effective Termination Date");
 - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
 - iii. cancel orders;
 - iv. assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
 - v. take no action which will increase the amounts payable by the County under this Agreement; and
- f) In the event that the County exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Articles herein for the:
 - i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
 - ii. non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement, but not incorporated in the Services.
- g) All compensation pursuant to this Article are subject to audit.

ARTICLE 30. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing, and in addition to those instances referred to herein as a breach, an Event of Default shall include the following:
 - i. the Contractor has not delivered Deliverables on a timely basis;
 - ii. the Contractor has refused or failed to supply enough properly skilled staff personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;

- iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection b below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with the terms of this Agreement. Until the County receives such assurances, the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed timeframe, the County may:
- i. treat such failure as a repudiation of this Agreement; and
 - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 31. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

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

ARTICLE 32. REMEDIES IN THE EVENT OF DEFAULT

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

- a) lost revenues;

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

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

ARTICLE 33. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights in the performance of the Work.
- b) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.
- c) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.
- d) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- e) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

ARTICLE 34. CONFIDENTIALITY

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County

in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, may constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 35. SOFTWARE ESCROW

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

Solely in the event of a release event as defined under the Escrow Agreement, the Contractor grants to County, a non-exclusive, perpetual, paid in full license, to install, use, copy, publicly perform and digitally perform, modify and create derivative works, for the sole purpose of continuing the benefits afforded to the County under this Agreement, including the development

of patches and upgrades solely for County's internal use. County shall have a right to modify and customize the Software, or to have the Software modified and customized by third-parties.

Should any of the following occur, such source code shall be released to the County:

- A. In the event that Contractor (or any assignee of its obligations under this agreement or any contract under which it is providing computerized services to Miami-Dade Administrative Agent):
 - i. Becomes insolvent, files for relief under 11 U.S.C. §101, *et seq.*, or should proceedings be instituted against them in involuntary bankruptcy or respite, or should proceedings be taken against them looking to the appointment of a receiver, or syndic, or should any order be issued by any court for the appointment of a receiver;
 - ii. Ceases to continue to conduct business for a period of thirty (30) days;
 - iii. Merges with another business entity that cannot or is not willing to provide the services Owner has agreed to provide, and is then currently providing to Miami-Dade County or
 - iv. Assigns Owner's rights to the intellectual property with respect to the Owner software, as defined in the Source Code Escrow Agreement then currently being used by Miami-Dade County, and the assignee cannot or no longer intends to provide the services Owner has agreed to provide, and is then currently providing to Miami-Dade County.
- B. Escrow Agent withdraws or is unable or unwilling to continue serving in that capacity without appointment by Owner of an equally qualified and insured escrow agent, and acceptance of that appointment by the Escrow Agent within 30 days of withdrawal of the predecessor escrow agent.
- C. Any other circumstance that places the source code at risk or otherwise subject to exposure, release or loss and/or potentially jeopardizes the integrity or current status of the Miami-Dade County operation requiring access to a current source code.

ARTICLE 36. PROPRIETARY INFORMATION

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

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

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, 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"). Contractor may remove Computer Software only for debugging and resolution purposes. All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 37. PROPRIETARY RIGHTS

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection with the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.
- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the Contractor.
- c) Except as otherwise provided in subsections a and b, 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 or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code

provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 38. VENDOR REGISTRATION/CONFLICT OF INTEREST

a) **Vendor Registration**

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

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| <p>1. Miami-Dade County Ownership Disclosure Affidavit
(Section 2-8.1 of the County Code)</p> <p>2. Miami-Dade County Employment Disclosure Affidavit
(Section 2-8-1(d)(2) of the County Code)</p> <p>3. Miami-Dade Employment Drug-free Workplace Certification
(Section 2-8.1.2(b) of the County Code)</p> <p>4. Miami-Dade Disability and Nondiscrimination Affidavit
(Section 2-8.1.5 of the County Code)</p> <p>5. Miami-Dade County Debarment Disclosure Affidavit
(Section 10.38 of the County Code)</p> <p>6. Miami-Dade County Vendor Obligation to County Affidavit
(Section 2-8.1 of the County Code)</p> <p>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)</p> <p>8. Miami-Dade County Family Leave Affidavit
(Article V of Chapter 11 of the County Code)</p> <p>9. Miami-Dade County Living Wage Affidavit
(Section 2-8.9 of the County Code)</p> <p>10. Miami-Dade County Domestic Leave and Reporting Affidavit
(Article 8, Section 11A-60 11A-67 of the County Code)</p> <p>11. Subcontracting Practices
(Ordinance 97-35)</p> | <p>12. Subcontractor /Supplier Listing
(Section 2-8.8 of the County Code)</p> <p>13. Environmentally Acceptable Packaging
(Resolution R-738-92)</p> <p>14. W-9 and 8109 Forms
(as required by the Internal Revenue Service)</p> <p>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:</p> <ul style="list-style-type: none"> ▪ Identification of individual account records ▪ To make payments to individual/Contractor for goods and services provided to Miami-Dade County ▪ Tax reporting purposes <p>To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records.</p> <p>16. Office of the Inspector General
(Section 2-1076 of the County Code)</p> <p>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.</p> <p>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.</p> |
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b) Conflict of Interest

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593

ARTICLE 39. INSPECTOR GENERAL REVIEWS**Independent Private Sector Inspector General Reviews**

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

Miami-Dade County Inspector General Review

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

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

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

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

ARTICLE 40. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

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

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment without regard to race, 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.

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

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 41. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

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

ARTICLE 42. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of

the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the award of this Agreement.

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

ARTICLE 43. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

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

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and

- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 44. BANKRUPTCY

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

ARTICLE 45. 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 46. COUNTY USER ACCESS PROGRAM (UAP)

a) User Access Fee

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

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

b) Joint Purchase

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

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

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

c) Contractor Compliance

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 30 of this Contract.

ARTICLE 47. SURVIVAL

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

ARTICLE 48. ANNUAL APPROPRIATION

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

ARTICLE 49. FORCE MAJEURE

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

ARTICLE 50. LIQUIDATED DAMAGES

The County and Contractor hereby agree that the delivery of completion of project milestones as outlined in Appendix A, "Scope of Services" are the essence of this Contract. Should the completion date described in Appendix C, "Implementation Timeline," not be achieved by the time specified (or as subsequently modified by mutual agreement of the parties), there may be deducted at the County's election, not as a penalty but as liquidated damages of One Thousand Five Hundred Dollars (\$1,500.00) per day for each and every calendar day of delay beyond the duration outlined in Appendix C.

Except with respect to defaults of Contractor's Subcontractors, the Contractor shall not be liable for liquidated damages when delays arise out of causes beyond the control and without the default or negligence of the Contractor, including delays resulting from the action or inaction of the County.

ARTICLE 51. FIRST SOURCE HIRING REFERRAL PROGRAM

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

ARTICLE 52. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF A PUBLIC AGENCY

The Contractor shall comply with the state of FL Public Records Law, s. 119.0701, F.S., specifically to: (1) keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service; (2) provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency. If the Contractor does not comply with a public records request, the public agency shall enforce contract provisions in accordance with the contract.

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

CONTRACTOR

MIAMI-DADE COUNTY

By: *John T. Gatchell*

By: _____

Name: LUKE T. GATCHEL

Name: Carlos A. Gimenez

Title: SENIOR VP

Title: Mayor

Date: 6/10/2019

Date: _____

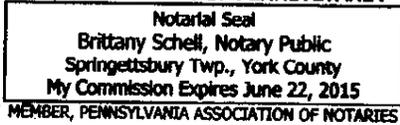
Attest: *Brittany Schell*
Corporate Secretary/Notary Public

Attest: _____
Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form
and legal sufficiency

COMMONWEALTH OF PENNSYLVANIA



Assistant County Attorney

APPENDIX A- SCOPE OF SERVICES

Civil Process Solution

This document provides the project services required to implement the Civil Process Solution provided by Teleosoft, Inc in accordance with the Agreement with the County. It defines the deliverables related to each component during the various phases of project implementation including the responsibilities for each deliverable.

Solution Overview & Objectives

Teleosoft CountySuite Sheriff Solution overview and objectives for the County is fully described in RFP887. Teleosoft brings a proven and tested solution that provides a solid foundation, designed with a flexible architecture that can adapt to the features, capabilities, and requirements of the County. This means your application will stay updated with not only state standards, but also from a technology standard.

CountySuite includes perpetual software license(s) to accommodate the required number of users, as well as automate the current process service function. CountySuite will be County hosted and reside on County hardware and shall provide the ability for the application to be used in a mobile environment using wireless mobile devices which will be provided by MDPD. CountySuite will automate many of the back-office functions and provide a public facing website to allow limited functionality of inquiries by the general public.

CountySuite will minimize much of the duplicate data entry that occurs between the COC and MDPD. In order to minimize the amount of paper currently generated, CountySuite includes the ability to use scanned documents (as attachments) that are currently received from various sources (including the COC). CountySuite automates the Sheriff's Return of Service form which is an integral part of the function performed by the CSB. Additionally, the County desires to "convert" the existing CPB data into the new solution.

CountySuite will provide functionality for end users to have the capability to add, modify, and delete in a mobile environment over a cellular data network as well as functionality to allow wireless users to perform data entry duties without a wireless connection. CountySuite will be capable of transmitting all "offline" transactions once connectivity is re-established.

Teleosoft will deliver a product that functions as you expect using the Agile process as described in Project Management section of the RFP (See RFP887, Question 12 & 13, pages 43-52). Some of the key benefits to Agile are that everyone involved in the project knows what is happening, that the most important things are being worked on, and that real, demonstrable progress is being delivered on a consistent basis. Agile also allows for great flexibility when changes and adjustments are necessary.

Although most of the application work will be done with our team in our office, the Project

Manager will be regularly on-site in Miami-Dade. MDPD's primary roles include your IT department with hardware/network set-up, defining Sprint Stories to make sure everyone understands the requirements/expected results, and testing. With a project that demands continuous communication, regular meetings; bi-weekly progress reports (see RFP887, Question 12, page 48).

After training and go-live (see RFP887, Questions 15, pages 55-56), is ongoing Production Maintenance Support (see RFP887, Question 16, page 17). Teleosoft partners with the County to ensure your work can be done in the most efficient way possible. When the County needs a resolution to a real-world situation, Teleosoft will work with you to find that solution. Whether this need arises because of a judicial requirement change, an infrequent or complex workflow requirement, a user training requirement (e.g. a new employee just learning the system), or an identified defect, Teleosoft will provide support and solutions.

The most significant factor in production support is continuous improvement. Teleosoft has never been satisfied with the status quo. Teleosoft will continually solicit feedback from the County in order to make CountySuite better. As a part of the regular software maintenance agreement, Teleosoft provides regular improvements and updates to our CountySuite Sheriff Product line. We will work closely with the County IT department to ensure updates are well planned, well tested, and well executed. Documentation updates (where necessary) and Release Notes are provided with each update, and the County will be apprised of the effective improvements well ahead of the upgrade.

This Statement of Work accompanies an Agreement that has been executed by the parties. All statements of fact contained in this Statement of Work are subject to the terms and conditions set forth in such Agreement. The terms and conditions set forth in the Agreement control in the event of any inconsistency between such terms and conditions and the matters set forth in this Statement of Work.

1. Project Background

Teleosoft, Inc. has implemented and installed Software for the Prothonotary Office. The Software for this installation is web-based and utilizes the Microsoft .NET Framework and Microsoft SQL Server.

2. Scope

2.1. Maintenance Services

The following are the Maintenance Services that will be performed by Contractor in connection with the Software. Contractor shall:

2.1.1. Develop and provide corrections, changes, or workarounds ("Corrections") for any defects, errors, or malfunctions in the Software (collectively, "Defects"), discovered by County, on a timely basis;

2.1.2. Provide to County all improvements, modifications and enhancements ("Improvements", which term will not include improvements, modifications and enhancements which are developed by Contractor specifically for its other customers which are specific to the systems or software of such other customers) to the Software which Contractor shall make or acquire from time to time and which Contractor makes available to its clients generally;

2.1.3. Provide County any upgrade releases ("Upgrade Releases") to the Software and all new Versions and Releases of the Software, which Contractor makes available to its clients generally;

2.1.4. At all times provide Maintenance Services for at least the current and one (1) previous Release of the Licensed Software; provided, that Contractor's obligation to maintain a previous Release will terminate 120 days after the current Release was made available to County.

2.2. Reporting Procedures

2.2.1. The first line of support will be the Contractor's Help Desk, who will contact the County Help Desk / IT Department when necessary.

2.2.2. The Contractor shall maintain a technical support entry point ("Support Center") in Pennsylvania, identified by a dedicated phone number and e-mail address. County may use this entry point to request service of the Covered Software. The Support Center operates during business hours, 6:30 a.m. to 10:00 p.m. (customer local time), Monday through Friday, excluding legal holidays. The Contractor will also provide their commercial, web-based incident and defect tracking solution as defined in the proposal submission on page 58.

2.2.3. Support calls and/or emails will be returned within one (1) business day. This response time may vary in any given call, based on telecommunications and internet availability and other factors. Contractor's only agreement herein with respect to such response time is to maintain functioning systems in place to permit achievement of such response times in more than eighty percent (80%) of such calls from all customers.

2.2.4. This technical support entry point will also coordinate problem resolution and keep the County apprised of efforts to remedy any problem situation until complete restoration of the service.

2.3. Coverage

2.3.1. Contractor assumes no responsibility for the correctness of, performance of, or any resulting incompatibilities with, current or future releases of the Covered Software if the County has made changes to the system hardware / software configuration or modifications to any supplied source code which changes effect the performance of the Covered Software and were made without prior notification and written approval by Contractor.

2.3.2. Contractor assumes no responsibility for hardware vendor operating systems or other system software.

2.3.3. Contractor assumes no responsibility for the operation or performance of any County-written or third-party software.

2.3.4. Coverage is limited to the Software operating at the following County site(s):
Miami-Dade County, FL

2.4. Change Management

The parties shall develop a mutually agreeable change management process. At a minimum, such process shall require Contractor to notify County and obtain County's approval prior to implementing any material changes to the services provided by Contractor hereunder or any changes which could materially affect County's use of the Software as contemplated in this Agreement.

3. Price and Payment

3.1. Fees

3.1.1. Maintenance Services for the applications and configuration listed in this Agreement will be provided for a fee as referenced in Appendix B. (This number may be pro-rated for the first year of this Agreement so that renewals will align with the calendar year). This fee will be adjusted at each anniversary date of this Agreement to the then current pricing. Should additional software be licensed and installed at the Covered Site(s), the fee will be adjusted to reflect the additional software.

3.1.2. Rates will be reviewed and adjusted accordingly when another site is added and/or the server base increases (i.e., added equipment and/or installed software) and/or software to be supported exceeds the Covered Software.

APPENDIX B - PRICE SCHEDULE

A. PAYMENT SCHEDULE

Milestone Detail	Description	Milestone Payment Percentage	Total Amount Due
Kickoff Meeting: Delivery of draft project schedule.		10%	\$44,200
Systems Analysis and Design		10%	\$44,200
Base Hardware and Software Setup		15%	\$66,300
Data Migration		15%	\$66,300
Feature Enhancements		10%	\$44,200
Integration		10%	\$44,200
Training		10%	\$44,200
Go Live/User Acceptance		20%	\$88,400
Total for Initial Implementation			\$442,000
Maintenance and Technical Support Services – Year 1			- Included -
Maintenance and Technical Support Services – Year 2			\$67,600
Maintenance and Technical Support Services – Year 3			\$71,000
Maintenance and Technical Support Services – Year 4			\$74,500
Maintenance and Technical Support Services – Year 5			\$78,300
Total for Initial Five Year Term:			\$291,400

Software Escrow Fees:

Description	Annual Fee
Software Escrow Year 1	\$2400
Software Escrow Year 2	\$1800
Software Escrow Year 3	\$1800
Software Escrow Year 4	\$1800
Software Escrow Year 5	\$1800
Total for Initial Five Year Term:	\$9600

B. OPTIONAL YEARS TO RENEW

1. Maintenance and Support Fees

Description	Annual Fee	Extended Total
OTR 1 – Maintenance and Technical Support Service Fees (Years 6 - 10)		\$454,200
Maintenance and Technical Support Service Fees <i>Contract Year 6</i>	\$82,200	
Maintenance and Technical Support Service Fees <i>Contract Year 7</i>	\$86,300	
Maintenance and Technical Support Service Fees <i>Contract Year 8</i>	\$90,600	
Maintenance and Technical Support Service Fees <i>Contract Year 9</i>	\$95,200	
Maintenance and Technical Support Service Fees <i>Contract Year 10</i>	\$99,900	
OTR 2 – Maintenance and Technical Support Service Fees (Years 11 - 15)		\$579,900
Maintenance and Technical Support Service Fees <i>Contract Year 11</i>	\$104,900	
Maintenance and Technical Support Service Fees <i>Contract Year 12</i>	\$110,200	
Maintenance and Technical Support Service Fees <i>Contract Year 13</i>	\$115,700	
Maintenance and Technical Support Service Fees <i>Contract Year 14</i>	\$121,500	
Maintenance and Technical Support Service Fees <i>Contract Year 15</i>	\$127,600	

2. Software Escrow Fees

Description	Annual Fee	Extended Total
OTR 1 – Software Escrow Fees (Years 6 - 10)		\$10,620
Software Escrow Fees <i>Contract Year 6</i>	\$2000	
Software Escrow Fees <i>Contract Year 7</i>	\$2060	
Software Escrow Fees <i>Contract Year 8</i>	\$2122	
Software Escrow Fees <i>Contract Year 9</i>	\$2186	
Software Escrow Fees <i>Contract Year 10</i>	\$2252	

Description	Annual Fee	Extended Total
OTR 2 – Software Escrow Fees (Years 11 - 15)		\$12,320
Software Escrow Fees <i>Contract Year 11</i>	\$2320	
Software Escrow Fees <i>Contract Year 12</i>	\$2390	
Software Escrow Fees <i>Contract Year 13</i>	\$2462	
Software Escrow Fees <i>Contract Year 14</i>	\$2536	
Software Escrow Fees <i>Contract Year 15</i>	\$2612	

C. OPTIONAL ITEMS

1. Professional Services:

During the term of the resultant contract, should the County wish to employ the Contractor for projects or services outside the scope of the services, all work performed will be billed on a time and materials basis as defined in the below rate schedule:

Service	Initial 5-yr Contract Term	OTR 1	OTR 2
Project Manager	\$200 per hr.	\$250per hr.	\$300 per hr.
Developer	\$150 per hr.	\$200 per hr.	\$250 per hr.
Web Developer	\$150 per hr.	\$200 per hr.	\$250 per hr.
Trainer	\$130 per hr.	\$180 per hr.	\$230 per hr.
Solution Administrator	\$200 per hr.	\$250 per hr.	\$300 per hr.
Database Administrator	\$200 per hr.	\$250 per hr.	\$300 per hr.
On-Site Training (Per Day)	\$1000 per day	\$1200 per day	\$1400 per day

APPENDIX C- ACCEPTANCE CRITERIA

APPENDIX C – ACCEPTANCE CRITERIA**DELIVERABLE ACCEPTANCE PROCEDURES**

The parties intend for the Solution to be brought into Production Mode, as defined below, in stages, as each of the functional components of the System are deployed as set forth in Appendix A “Scope of Services” project timeline. Each functional component will be subjected to its own testing and Final Acceptance will be deemed to have occurred for that component upon the component (i) satisfying the Final Acceptance Criteria (which will be agreed to by the parties) and (ii) module being used in Production Mode.

Contractor will notify County in writing (via email) when the Deliverables for a functional component of the System are ready for acceptance testing. County will commence testing on such Deliverables within three (3) County Work Days of being notified by Contractor, provided County has been given access to such Deliverables. County will have up to five (5) days, in its own discretion, to conduct its first round of acceptance tests and will use reasonable measures to determine whether the Deliverables are in conformance with the Final Acceptance Criteria for the applicable functional component, and will 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 Appendix C “Project Timeline”). Contractor will promptly commence work on resolving such punch list issues and will, as necessary, redeliver such Deliverables for further testing, which County will commence within two (2) days of receiving Contractor’s notice that the Deliverables are ready for such further testing. The parties shall agree, upon such redelivery, as to the time County requires 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.

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 Appendix C “Project Timeline.”

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 CCS Documents may result in the parties clarifying such requirements). Such Final Acceptance shall be evidenced by (i) a written acknowledgement by the County Project Manager (which acknowledgement shall not be arbitrarily or unreasonably withheld) that the System meets all such functional and technical requirements or (ii) County’s use of the System in a Production Mode. “Production Mode” means any use by the County of the System or any of its modules to process any day-to-day business activity on behalf of the County.

**DELIVERABLE ACCEPTANCE FORM
USER ACCEPTANCE TEST**

PROJECT: CIVIL PROCESS SOLUTION

In compliance with the requirements detailed in the above contract (including any modifications or amendments), the following project deliverable has been delivered, reviewed and formally accepted by the County and the Contractor. This document constitutes full acknowledgment by the County of acceptance and delivery of the deliverable detailed below.

It is understood that any future changes to this deliverable after this acceptance is given will require a formal Change Request Form be submitted.

DELIVERABLE NAME: USER ACCEPTANCE TEST (UAT)

Deliverable Description: During the User Acceptance Test period, the Contractor and the County collectively will check, verify, and adjust the System as needed to meet the operational specifications listed in RFP887 and the attached UAT report. During the User Acceptance Test period, the Contractor is required to:

- Verify and update the test scenarios
- Ensure configurations are working properly
- Train County personnel on the operation of the Solution and associated components
- Conduct final functionality control tests, additions/modifications, and software integration
- Verify the normal operation of the System and ensure compatibility of peripheral and system applications
- Resolve user problems and/or deficiencies identified by the County
- Correct and manage errors
- Update the System documentation
- At the County's discretion, one (1) week parallel period

Deliverable Date: _____

Accepted Unconditionally: Yes / No

Accepted Conditionally: Yes / No

Acceptance Conditions: _____

Not Accepted: _____

Reason: _____

General Comments: _____

Delivered By:

Signature	Name	Date
-----------	------	------

Accepted By:

Signature	Name	Date
-----------	------	------

FINAL SYSTEM ACCEPTANCE FORM

PROJECT: CIVIL PROCESS SOLUTION

In compliance with the requirements detailed in the above contract (including any modifications or amendments), the following project deliverable has been delivered, reviewed and formally accepted by the County and the Contractor. This document constitutes full acknowledgment by the County of acceptance and delivery of the deliverable detailed below.

It is understood that any future changes to this deliverable after this acceptance is given will require a formal Change Request Form be submitted.

The Warranty Period on this deliverable starts on: _____ and is valid for a twelve month period.

DELIVERABLE NAME: FINAL SYSTEM ACCEPTANCE

Deliverable Description: The delivered system meets the business requirements of the County as detailed in the Final System Acceptance Report. The Contractor has successfully completed the required System setup and integration for the Solution satisfies the criteria as specified in the scope of services for RFP887.

Deliverable Date: _____

Accepted Unconditionally: Yes / No

Accepted Conditionally: Yes / No

Acceptance Conditions: _____

Not Accepted: _____

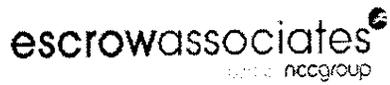
Reason: _____

General Comments: _____

Delivered By:		
Signature	Name	Date

Accepted By:		
Signature	Name	Date

APPENDIX D – SOFTWARE ESCROW AGREEMENT



Multi Licensee
Escrow Protection Certificate
Software Escrow Agreement

Date
Licensor [Teleosoft, Inc.]
Agreement Number [Agreement#]

Notice: The parties to this Agreement are obliged to inform Escrow Agent of any changes to the Software or in their circumstances (including change of name, principal office, contact details or change of Licensor of the intellectual property in the Software).

*Escrow Agreement Dated:**Between:*

- (1) [Teleosoft, Inc.], a corporation organized under the laws of Pennsylvania whose principal office is at [1700 7th Ave, Suite 150 York, PA 17403 ("Licensor"); and
- (2) NCC Group Escrow Associates, LLC, a corporation organized and existing under the laws of Georgia with its principal office at 8302 Dunwoody Place, Suite 150, Atlanta GA 30350, USA ("Escrow Agent").

Background:

- (A) The Licensee has been granted a License to use the Software which comprises computer programs.
- (B) Certain technical information and/or documentation relating to the software package is the confidential information and intellectual property of the Licensor or a third party.
- (C) The Licensor acknowledges that in certain circumstances, such information and/or documentation would be required by the Licensee in order for it to continue to exercise its rights under the License Agreement.
- (D) The parties therefore agree that such information and/or documentation should be placed with a trusted third party, Escrow Agent, so that such information and/or documentation can be released to the Licensee should certain circumstances arise.

Agreement:

In consideration of the mutual undertakings and obligations contained in this Agreement, the parties agree that:

1 Definitions and Interpretation

- 1.1 In this Agreement the following terms shall have the following meanings:

"Agreement" means the terms and conditions of this escrow agreement set out below, including the schedules hereto.

"Confidential Information" means all technical and/or commercial information not in the public domain and which is designated in writing as confidential by any party together with all other information of any party which may reasonably be regarded as confidential information.

"Deposit Form" means the form at Schedule 1 which is to be completed by Licensor and delivered to Escrow Agent with each deposit of the Escrow Material.

"Escrow Material" means the Source Code of the Software and such other material and documentation (including updates and upgrades thereto and new versions thereof) as are necessary to be delivered or deposited to comply with clause 2 of this Agreement.

"Escrow Protection Certificate" means the certificate issued by Escrow Agent to the Licensee confirming escrow coverage pursuant to the terms and conditions of this Agreement.

"Full Verification" means the tests and processes forming Escrow Agent's Full Verification service and/or such other tests and processes as may be agreed between the parties for the verification of the Escrow Material.

"Intellectual Property Rights" mean any copyright, patents, design patents, registered designs, design rights, utility models, trademarks, service marks, trade secrets, know how, database rights, moral rights, confidential information, trade or business names, domain names, and any other rights of a similar nature including industrial and proprietary rights and other similar protected rights in any country or jurisdiction together with all registrations, applications to register and rights to apply for registration of any of the aforementioned rights and any Licenses of or in respect of such rights.

"Letter of Intent" means the form completed by Licensor or Licensee containing the information to enable Escrow Agent to set up this Agreement or a Licensee Enrollment Form.

"License Agreement" means the agreement under which a Licensee was granted a License to use the Software.

"Licensee Enrollment Form" means the form at Schedule 2 confirming the Licensee's enrollment under this Agreement.

"Licensee" means any person, firm, company or other entity:

- 1.1.1 to whom a license to use the Software has been granted;
- 1.1.2 whom the Licensor has approved for registration under this Agreement by signing and returning to Escrow Agent a Licensee Enrollment Form.; and
- 1.1.3 who has been issued with an Escrow Protection Certificate by Escrow Agent;

and references in this Agreement to the Licensee shall be to the relevant Licensee or Licensees given the context in which such reference is made.

"Release Purposes" means the purposes of understanding, maintaining, modifying and correcting the Software exclusively for and on behalf of the Licensee together with such other purposes (if any) as are permitted under the License Agreement.

"Software" means the software package together with any updates and upgrades thereto and new versions thereof licensed to the Licensee under the License Agreement details of which are set out in Schedule 1 as updated from time to time.

"Source Code" means the computer programming code of the Software in human readable form.

"Third Party Escrow Material" means Source Code which is not the confidential information and intellectual property of the Licensor or the Licensee.

1.2 This Agreement shall be interpreted in accordance with the following:

- 1.2.1 headings are for ease of reference only and shall not be taken into consideration in the interpretation of this Agreement;
- 1.2.2 all references to clauses and schedules are references to clauses and schedules of this Agreement; and
- 1.2.3 all references to a party or parties are references to a party or parties to this Agreement.

2 Licensor's Duties and Warranties

2.1 The Licensor shall:

- 2.1.1 deliver a copy of the Escrow Material to Escrow Agent within 90 days of enrollment of Licensee;
- 2.1.2 deliver an update or replacement copy of the Escrow Material to Escrow Agent within 90 days of a material update, error correction, enhancement, maintenance release or functional modification to the Software which results in an updated delivery of the object code version of the Software to Licensee;
- 2.1.3 ensure that each copy of the Escrow Material deposited with Escrow Agent comprises the Source Code of the latest version of the Software used by the Licensee;
- 2.1.4 deliver to Escrow Agent a replacement copy of the Escrow Material within 90 days after the anniversary of the last delivery of the Escrow Material to ensure that the integrity of the Escrow Material media is maintained;
- 2.1.5 deliver with each deposit of the Escrow Material the following information:
 - 2.1.5.1 details of the deposit including the full name of the Software (i.e. the original name as set out under schedule 1 together with any new names given to the Software by the Licensor), version details, media type, backup command/software used, compression used, archive hardware and operating system details; and
 - 2.1.5.2 password/encryption details required to access the Escrow Material;
- 2.1.6 deliver with each deposit of the Escrow Material the following technical information (where applicable):
 - 2.1.6.1 documentation describing the procedures for building, compiling and installing the software, including names and versions of the development tools;
 - 2.1.6.2 software design information (e.g. module names and functionality); and
 - 2.1.6.3 name and contact details of employees with knowledge of how to maintain and support the Escrow Material; and
- 2.1.7 deposit a detailed list of the suppliers of any third party software or tools required to access, install, build or compile or otherwise use the Escrow Material.

2.2 The Licensor warrants to both Escrow Agent and the Licensee at the time of each deposit of the Escrow Material with Escrow Agent that:

- 2.2.1 it has the full right, ability and authority to deposit the Escrow Material;
- 2.2.2 in entering into this Agreement and performing its obligations under it, it is not in breach of any of its ongoing express or implied obligations to any third party(s); and
- 2.2.3 the Escrow Material deposited under Clause 2.1 contains all information in human-readable form and is on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain, modify and correct the Software.

2.3 When customer of Licensor becomes eligible under a License Agreement to be designated as a beneficiary of the Licensor's escrow protection, Licensor shall forward to Licensee a copy of this executed Escrow Agreement. Subsequently, Licensor shall forward to Escrow Agent a completed Licensee Enrollment Form thereby requesting that customer's registration into this escrow account as Licensee. Licensor shall be solely responsible for informing Escrow Agent as to any changes which affect the Licensee's rights under this Escrow Agreement, including providing Escrow Agent any updates to the Licensee's contact information.

3 Escrow Agent's Duties

- 3.1 Escrow Agent shall:
- 3.1.1 at all times during the term of this Agreement, retain the latest deposit of the Escrow Material in a safe and secure environment;
 - 3.1.2 **notify Licensor and the relevant Licensee of the acceptance of any Licensee Enrollment form; and**
 - 3.1.3 inform Licensor of the receipt of any deposit of Escrow Material by sending the Licensor a copy of the Deposit Form and/or an acknowledgment letter, as the case may be.
- 3.2 In the event of failure by the Licensor to deposit any Escrow Material with Escrow Agent, Escrow Agent shall not be responsible for procuring such deposit and may, at its sole discretion, notify the Licensor of the Licensor's failure to deposit any Escrow Material.
- 3.3 Escrow Agent may appoint agents, contractors or sub-contractors as it deems fit to carry out the Full Verification process. Escrow Agent shall ensure that any such agents, contractors and sub-contractors are bound by the same confidentiality obligations as are contained in clause 7.
- 3.4 Escrow Agent has the right to make such copies of the Escrow Material as may be necessary solely for the purposes of this Agreement.

4 Payment

- 4.1 The parties shall pay Escrow Agent's standard fees and charges as published from time to time or as otherwise agreed. Escrow Agent's fees as published are exclusive of any applicable sales tax.
- 4.2 If Escrow Agent is required to perform any additional or extraordinary services as a result of being an escrow agent including intervention in any litigation or proceeding, Escrow Agent shall receive reasonable compensation for such services from the Licensor unless agreed otherwise and be reimbursed for all costs incurred, including reasonable attorney's fees.
- 4.3 Escrow Agent shall be entitled to review and vary its standard fees and charges for its services under this Agreement from time to time but no more than once a year and only upon 45 days written notice to the parties.
- 4.4 All invoices are payable within 30 days from the date of invoice. Interest shall accrue at the lesser of 1.5% per month or the maximum amount permitted by applicable law for any fees that are undisputed by the paying party and remain unpaid for more than 30 days past the due date of the applicable invoice.
- 4.5 In the event of a dispute made in good faith as to the amount of fees, the party responsible for payment agrees to remit payment on any undisputed amount(s) in accordance with Clause 4.1 above. In such circumstances, the interest on the fees shall not accrue as to any disputed amounts unless not paid within 30 days after such dispute has been resolved by the parties.
- 4.6 Escrow Agent shall have no obligations under this Agreement until the initial invoice has been paid in full.

5 Release Events

- 5.1 Subject to: (i) the remaining provisions of this clause 5 and (ii) the receipt by Escrow Agent of its release fee and any other fees and interest (if any) outstanding under this Agreement and (iii) the receipt by Escrow Agent of a signed Notice of the occurrence of a release event which requests a release of the Escrow Deposit ("Release Request", as illustrated in Schedule 3 hereto) and pledges to indemnify Escrow Agent for acting on such request, Escrow Agent will release the Escrow Material to a duly authorized officer of the Licensee if any of the following events ("Release Event(s)") occur:
- 5.1.1 Licensor files a petition in bankruptcy, files a petition seeking any reorganization (without confirming immediately in writing to Licensee that it will continue to maintain the Software in accordance with the terms of the License Agreement or any applicable maintenance agreement), makes an arrangement, composition, or similar relief under any law regarding insolvency or relief for debtors, or makes an assignment for the benefit of creditors; or
 - 5.1.2 any involuntary petition or proceeding under bankruptcy or insolvency laws is instituted against Licensor and not stayed, enjoined, or discharged within 60 days; or
 - 5.1.3 Licensor takes any corporate action authorizing any of the foregoing; or
 - 5.1.4 any similar or analogous proceedings or event to those in Clauses 5.1.1 to 5.1.3 above occurs in respect of Licensor within any jurisdiction outside the USA; or
 - 5.1.5 Licensor or, where relevant, its agent, parent, subsidiary or associated company is in material breach of its obligations as to maintenance or modification of the Software under the License Agreement or any maintenance agreement entered into in connection with the Software and has failed to remedy such default notified by Licensee to Licensor within a reasonable period.
 - 5.1.6 Licensor has provided Licensee and Escrow Agent with written authorization to release the Escrow Material to the named Licensee.
- 5.2 The Licensee must notify Escrow Agent, with a copy to the Licensor, of the Release Event specified in Clause 5.1 by delivering to Escrow Agent a notice in writing ("**Notice**") as defined in Schedule 3 attached hereto declaring that such Release Event has occurred, setting out the facts and circumstances of the Release Event, that the License Agreement and any maintenance agreement, if relevant, for the Software was still valid and effective up to the occurrence of such Release Event and exhibiting such documentary

evidence in support of the Notice as Escrow Agent shall reasonably require.

5.3 Upon receipt of a Notice from Licensee claiming that a Release Event has occurred:

5.3.1 Escrow Agent shall submit a copy of the Notice to Licensor (with a copy to the Licensee in order to acknowledge receipt of the Notice) by courier or other form of guaranteed delivery; and

5.3.2 unless within 30 calendar days after the date of dispatch of the Notice from Escrow Agent, Escrow Agent receives a counter-notice in writing from Licensor stating that in their view no such Release Event has occurred or, if appropriate, that the event or circumstance giving rise to the Release Event has been rectified as shown by documentation in support thereof,

Escrow Agent will release the Escrow Material to Licensee for its use for the Release Purposes.

5.4 Upon receipt of the counter-notice from Licensor under Clause 5.3.2, Escrow Agent shall send a copy of the counter-notice and any supporting evidence to Licensee (with a copy to Licensor in order to acknowledge receipt of the counter-notice) by courier or other form of guaranteed delivery.

5.5 Within 90 days of dispatch of the counter-notice by Escrow Agent, Licensee may give notice to Escrow Agent that they wish to invoke the dispute resolution procedure under Clause 6.

5.6 If, within 90 days of dispatch of the counter-notice by Escrow Agent to Licensee, Escrow Agent has not been informed by Licensee that they wish the dispute resolution procedure under Clause 6 to apply, the Notice submitted by Licensee will be deemed to be no longer valid and Licensee shall be deemed to have waived their right to release of the Escrow Material for the particular reason or event specified in the original Notice. In such circumstances, this Agreement shall continue in full force and effect.

6 Disputes

6.1 Upon receipt of Licensee's notice requesting dispute resolution pursuant to Clause 5.5 above, Escrow Agent shall notify Licensor of the Licensee's request for dispute resolution. Licensor and Licensee shall submit their dispute to expedited binding arbitration in the state specified under the License Agreement under Commercial Arbitration Rules of the American Arbitration Association by one arbitrator appointed by the said rules. The decision of the arbitrator shall be final and binding upon the parties and enforceable in any court of competent jurisdiction, and a copy of such decision shall be delivered immediately to Licensor, Licensee and Escrow Agent. The parties shall use their best efforts to commence the arbitration proceedings within 14 days following delivery of the counter-notice. The sole question to be determined by the arbitrator shall be whether or not there existed a Release Event at the time Licensee delivered the Notice to Escrow Agent.

6.2 If the arbitrator finds that a Release Event existed at the time of delivery of the Notice to Escrow Agent, Escrow Agent is hereby authorized to release and deliver the Escrow Material to the Licensee within 5 working days of the decision being notified by the arbitrator to the parties. If the arbitrator finds to the contrary, then Escrow Agent shall not release the Escrow Material and shall continue to hold it in accordance with the terms of this Agreement.

6.3 The parties hereby agree that the costs and expenses of the arbitrator, the reasonable attorneys' fees and costs incurred by the prevailing party in the arbitration and any costs incurred by Escrow Agent in the arbitration shall be paid by the non-prevailing party.

7 Confidentiality

7.1 The Escrow Material shall remain at all times the confidential and intellectual property of its owner.

7.2 In the event that Escrow Agent releases the Escrow Material to Licensee, Licensee shall be permitted to use the Escrow Material only for the Release Purposes.

7.3 Subject to Clause 7.4, Escrow Agent agrees to keep all Confidential Information relating to the Escrow Material and/or the Software that comes into its possession or to its knowledge under this Agreement in strict confidence and secrecy. Escrow Agent further agrees not to make use of such information and/or documentation other than for the purposes of this Agreement and, unless the parties should agree otherwise in writing and subject to Clause 7.4, will not disclose or release it other than in accordance with the terms of this Agreement.

7.4 Escrow Agent may release the Escrow Material to the extent that it is required by applicable federal, state or local law, regulation, court order, judgment, decree or other legal process, provided that Escrow Agent has notified Licensor and Licensee prior to such required release, has given Licensor and/or Licensee an opportunity to contest (at their own expense) such required release, within the time parameters mandated by such applicable regulation, court order, judgment, decree or other legal process. Escrow Agent is hereby expressly authorized in its sole discretion to obey and comply with all orders, judgments, decrees so entered or issued by any court, without the necessity of inquiring as to the validity of such order, judgment or decree, or the court's underlying jurisdiction. Where Escrow Agent obeys or complies with any such order, judgment or decree, Escrow Agent shall not be liable to Licensee, Licensor or any third party by reason of such compliance, notwithstanding that such order, judgment or decree may subsequently be reversed, modified or vacated.

7.5 Any request by a Licensee under Clause 9.3 for a Full Verification shall not be disclosed to any other Licensee(s) except as the requesting Licensee agrees.

8 Intellectual Property Rights

8.1 The release of the Escrow Material to the Licensee will not act as an assignment of any Intellectual Property Rights that the Licensor or any third party possesses in the Escrow Material.

8.2 The Intellectual Property Rights in any Full Verification report shall remain vested in Escrow Agent. The Licensor and the party who commissioned the Full Verification shall each be granted a non-exclusive right and license to use the report for the purposes of this Agreement and their own internal purposes only.

9 Full Verification

- 9.1 Escrow Agent shall bear no obligation or responsibility to any party to this Agreement or person, firm, company or entity whatsoever to determine the existence, relevance, completeness, accuracy, operation, effectiveness, functionality or any other aspect of the Escrow Material received by Escrow Agent under this Agreement.
- 9.2 Any party to this Agreement, including named Licensees, shall be entitled to require Escrow Agent to carry out a Full Verification. Subject to clause 9.3, Escrow Agent's prevailing fees and charges for the Full Verification processes and all reasonable expenses incurred by Escrow Agent in carrying out the Full Verification processes shall be payable by the requesting party.
- 9.3 Should the Escrow Material deposited fail to satisfy Escrow Agent's Full Verification test, the Licensor shall, within 14 days of the receipt of the notice of test failure from Escrow Agent, deposit such new, corrected or revised Escrow Material as shall be necessary to ensure its compliance with its warranties and obligations in clause 2. If the Licensor fails to make such deposit of the new, corrected or revised Escrow Material, Escrow Agent will issue a report to the Licensee detailing the problem with the Escrow Material as revealed by the relevant tests.

10 Escrow Agent's Liability

- 10.1 Nothing in this Clause 10 excludes or limits the liability of Escrow Agent for gross negligence or intentional misconduct.
- 10.2 Subject to Clause 10.1, Escrow Agent shall not be liable for:
- 10.2.1 any loss or damage caused to either Licensor or Licensee except to the extent that such loss or damage is caused by the negligent acts or omissions of or a breach of any contractual duty by Escrow Agent, its employees, agents or sub-contractors and in such event Escrow Agent's total liability with regard to all claims arising under or by virtue of this Agreement or in connection with the performance or contemplated performance of this Agreement, shall not exceed the sum of \$100,000 (one hundred thousand US dollars); and
- 10.2.2 any special, indirect, incidental or consequential damages whatsoever.
- 10.3 Escrow Agent shall not be responsible in any manner whatsoever for any failure or inability of Licensor or Licensee to perform or comply with any provision of this Agreement.
- 10.4 Escrow Agent shall not be liable in any way to Licensor or Licensee for acting in accordance with the terms of this Agreement and specifically (without limitation) for acting upon any notice, written request, waiver, consent, receipt, statutory declaration or any other document furnished to it pursuant to and in accordance with this Agreement.
- 10.5 Escrow Agent shall not be required to make any investigation into and shall be entitled in good faith without incurring any liability to Licensor or Licensee to assume (without requesting evidence thereof) the validity, authenticity, veracity and due and authorized execution of any documents, written requests, waivers, consents, receipts, statutory declarations or notices received by it in respect of this Agreement.

11 Indemnity

Licensor agrees to defend and indemnify Escrow Agent and to hold Escrow Agent harmless from and against any claims, suits or other proceedings, actions, losses, costs, liabilities or expenses incurred in connection with the defense thereof (including reasonable attorney's fees), in each case which may be imposed on, or incurred by or asserted against Escrow Agent in any way arising out of or relating to this Agreement, provided that Licensor shall not be liable for that portion of any such indemnification amount resulting from Escrow Agent's negligence or intentional misconduct.

12 Term and Termination

- 12.1 This Agreement shall continue until terminated in accordance with this Clause 12.
- 12.2 If Licensor or Licensee, as the case may be, fails to pay an invoice addressed to it for services under this Agreement within 30 days of its issue, Escrow Agent reserves the right to give that party written notice to pay the outstanding invoice within 30 days. If Licensor has not paid its invoice by the expiry of the 30 day notice period, Escrow Agent will give Licensee(s) a period of 30 days to pay Licensor's invoice. If Licensor or Licensee (as appropriate) has not paid its invoice after being given notice in accordance with this Clause, Escrow Agent shall have the right to terminate this Agreement or the registration of Licensee (as appropriate) without further notice. Any amounts owed by Licensor but paid by Licensee(s) will be recoverable by Licensee(s) direct from Licensor as a debt and, if requested, Escrow Agent shall provide appropriate documentation to assist in such recovery.
- 12.3 Upon termination of this Agreement in its entirety under the provisions of Clause 12.2 Escrow Agent has the authority to destroy the Escrow Material.
- 12.4 Notwithstanding any other provision of this Clause 12, Escrow Agent may resign as Escrow Agent hereunder and terminate this Agreement by giving sixty (60) days written notice to Licensor and Licensee(s). In the event that it is terminated in its entirety, Licensor and Licensee(s) shall appoint a mutually acceptable new custodian on similar terms and conditions to those contained herein. If a new custodian is not appointed within 14 days of delivery of such notice, Licensor or Licensee(s) shall be entitled to request the American Arbitration Association to appoint a suitable new custodian upon terms and conditions consistent with those in this Agreement. Such appointment shall be final and binding on Licensor and Licensee(s). If Escrow Agent is notified of the new custodian within the notice period, Escrow Agent will forthwith deliver the Escrow Material to the new custodian. If Escrow Agent is not notified of the new custodian within the notice period and this Agreement has been terminated in its entirety, Escrow Agent will return the Escrow Material to Licensor.
- 12.5 Licensee may terminate this Agreement in respect of itself only at any time by giving sixty (60) days prior written notice to Escrow Agent.

- 12.6 If the License Agreement with a Licensee has expired or has been lawfully terminated, then Licensor shall be entitled to give written notice to Escrow Agent to terminate the relevant Licensee's interests under this Agreement. Upon receipt of such a notice from Licensor, Escrow Agent shall notify the Licensee of the notice to terminate. The Licensee shall have sixty (60) days to dispute the fact that the License Agreement has been terminated by providing such counter-notice in writing to Licensor and Escrow Agent. Any disputes arising under this Clause shall be dealt with in accordance with the dispute resolution procedure in Clause 6. Upon termination of the entire agreement under this Clause, Escrow Agent shall return the Escrow Material to Licensor.
- 12.7 Subject to Clause 12.6, Licensor may only terminate this Agreement in its entirety by providing Escrow Agent with proper notice to terminate all registered Licensees. Such termination will be effective as of sixty (60) days after Escrow Agent informs all such Licensees of the impending termination.
- 12.8 This Agreement shall immediately terminate in respect of a Licensee upon release of the Escrow Material to that Licensee in accordance with Clause 5.
- 12.9 The termination of this Agreement in respect of a Licensee shall be without prejudice to the continuation of this Agreement in respect of any other Licensees.
- 12.10 If any terminations of Licensees' interests under this Agreement result in there being no Licensees registered under this Agreement, unless otherwise instructed by Licensor, this Agreement will continue and the Escrow Material will be retained by Escrow Agent pending registration of other Licensees.
- 12.11 The provisions of Clauses 1, 2.2, 4, 7, 8, 9.1, 10, 11, 12.13 to 12.15 (inclusive) and 13 shall continue in full force after termination of this Agreement.
- 12.12 On and after termination of this Agreement, Licensor and/or Licensee(s) (as appropriate) shall remain liable to Escrow Agent for payment in full of any fees and interest which have become due but which have not been paid as at the date of termination.
- 12.13 The termination of this Agreement, however arising, shall be without prejudice to the rights accrued to the parties prior to termination.

13 General

- 13.1 Licensor and Licensee(s) shall notify Escrow Agent and each other, within 30 days of its occurrence, of any of the following:
 - 13.1.1 a change of its name, principal office, contact address or other contact details; and
 - 13.1.2 any material change in its circumstances that may affect the validity or operation of this Agreement.
- 13.2 This Agreement shall be deemed entered into in Pennsylvania and will be governed by and construed according to the laws of the state of Pennsylvania, excluding that body of law known as conflict of law. The parties agree that any dispute arising under this Agreement will be resolved in the state or federal courts in Pennsylvania and the parties hereby expressly consent to the jurisdiction thereof.
- 13.3 This Agreement together with, in respect of each Licensee, their Licensee Enrollment Form, and any relevant Escrow Agent standard terms and conditions including Escrow Agent escrow terms and conditions and, where applicable, Escrow Agent verification terms and conditions represent the whole agreement relating to the escrow arrangements between Escrow Agent and the other parties for the Software and shall supersede all prior agreements, discussions, arrangements, representations, negotiations and undertakings. In the event of any conflict between any of these documents, the terms of this Agreement shall prevail.
- 13.4 Unless the provisions of this Agreement otherwise provide, any notice or other communication required or permitted to be given or made in writing hereunder shall be validly given or made if delivered by hand or courier or if dispatched by certified or registered mail (airmail if overseas) addressed to the address specified for the parties in this Agreement or their Registration Agreement (or such other address as may be notified to the parties from time to time) or if sent by facsimile message to such facsimile number as has been notified to the parties from time to time and shall be deemed to have been received:
 - (i) if delivered by hand or courier, at the time of delivery;
 - (ii) if sent by certified or registered mail (airmail if overseas), 3 business days after posting (6 days if sent by airmail);
 - (iii) if sent by facsimile, at the time of completion of the transmission of the facsimile with facsimile machine confirmation of transmission to the correct facsimile number of all pages of the notice.
- 13.5 Except where Licensor or Licensee merges, is acquired or has substantially all of its assets acquired and the new entity or acquirer agrees to assume all of their obligations and liabilities under this Agreement, Licensor and Licensee shall not assign, transfer or subcontract this Agreement or any rights or obligations hereunder without the prior written consent of the other parties.
- 13.6 Escrow Agent shall be entitled to transfer or assign this Agreement upon written notice to both Licensor and all Licensees.
- 13.7 This Agreement shall be binding upon and survive for the benefit of the successors in title and permitted assigns of the parties.
- 13.8 If any provision of this Agreement is declared too broad in any respect to permit enforcement to its full extent, the parties agree that such provision shall be enforced to the maximum extent permitted by law and that such provision shall be deemed to be varied accordingly. If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, or unenforceable, it shall, to the extent of such illegality, invalidity or unenforceability, be deemed severable and the remaining part of the provision and the rest of the provisions of this Agreement shall continue in full force and effect.
- 13.9 Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorized representative of both the Licensor and Escrow Agent.
- 13.10 The parties shall not be liable to each other or be deemed to be in breach of this Agreement by reason of any delay in performing, or

failure to perform, any of their obligations under this Agreement if the delay or failure was for a reason beyond that party's reasonable control (including, without limitation, fire, flood, explosion, epidemic, riot, civil commotion, any strike, lockout or other industrial action, act of God, war or warlike hostilities or threat of war, terrorist activities, accidental or malicious damage, or any prohibition or restriction by any governments or other legal authority which affects this Agreement and which is not in force on the date of this Agreement). A party claiming to be unable to perform its obligations under this Agreement (either on time or at all) in any of the circumstances set out above must notify the other parties of the nature and extent of the circumstances in question as soon as practicable. If such circumstances continue for more than six months, any of the other parties shall be entitled to terminate this Agreement by giving one month's notice in writing.

- 13.11 No waiver by any party of any breach of any provisions of this Agreement shall be deemed to be a waiver of any subsequent or other breach and, subject to Clause 5.6, no failure to exercise or delay in exercising any right or remedy under this Agreement shall constitute a waiver thereof.
- 13.12 This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

Signed for and on behalf of [Teleosoft, Inc.]

Name: |

Position: | (Authorized Signatory)

Date: |

Signed for and on behalf of NCC Group Escrow Associates, LLC

Name: |

Position: | (Authorized Signatory)

Date: |