

Contract No. SS8016-2/11-OTR

**Elections Training and Reporting Software**

THIS AGREEMENT made and entered into as of this 15th day of May 2006, by and between SOE Software Corporation, a corporation organized and existing under the laws of the State of Florida, having its principal office at 500 N. West Shore Blvd., Suite 300, Tampa, Florida 33609 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide Election Night Reporting and Poll Worker Training Software, that shall conform to the Scope of Services (Appendix A) incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated March 15, 2006 hereinafter referred to as the "Contractor's Proposal" which is incorporated by reference herein; and,

WHEREAS, the County desires to procure from the Contractor such software, maintenance and support services for the County, in accordance with the terms and conditions of this Agreement;

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

**ARTICLE 1. DEFINITIONS**

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

- a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.
- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative.
- d) The word "Contractor" to mean SOE Software Corporation and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words "Change Order" or "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- i) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Contract.
- k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- m) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

**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) and any associated addenda and attachments thereof, 3) the Maintenance and Support and Software License Agreement (Appendix D.)

### **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) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- b) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- c) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- d) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

### **ARTICLE 5. CONTRACT TERM**

The Contract shall become effective on the date set forth above and shall be for a duration of three (3) years. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for a period for two (2) additional years on a year-to-year basis. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

#### **ARTICLE 6. NOTICE REQUIREMENTS**

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

##### **(1) to the County**

###### a) to the Project Manager:

Miami-Dade County  
Elections Department  
2700 NW 87th Ave  
Miami, FL 33172

Attention: Maria Saboya  
Phone: (305) 499-8568  
Fax: (305) 499-8547  
Email: oya@miamidade.gov

and,

###### b) to the Contract Manager:

Miami-Dade County  
Department of Procurement Management  
111 N.W. 1<sup>st</sup> Street, Suite 1375  
Miami, FL 33128-1974

Attention: Dag J. Abreu  
Phone: (305) 375-4417  
Fax: (305) 375-5688  
Email: dabreu@miamidade.gov

##### **(2) To the Contractor**

SOE Software Corporation  
500 N. West Shore Blvd., Suite 300  
Tampa, Florida 33609

Attention: Marc Fratello  
Phone: (813) 490-7140

Fax: (813) 490-7145  
E-mail: mfratello@soesoftware.com

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

#### **ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED**

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in the total amount of **three hundred ninety five thousand seven hundred sixty-nine dollars (\$395,769.00)**. The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

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

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

#### **ARTICLE 8. PRICING**

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

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

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor pursuant to ARTICLE 41 - PAYMENT SCHEDULE.

All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County and shall show the County's contract number. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the

County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

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

Miami-Dade County  
Elections Department  
2700 NW 87th Ave  
Miami, FL 33172

Attention: Maria Saboya  
Phone: (305) 499-8568  
Fax: (305) 499-8547  
Email: oya@miamidade.gov

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

#### **ARTICLE 10. INDEMNIFICATION AND INSURANCE**

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

Upon County's notification, the Contractor shall, furnish to Miami-Dade County, Department of Procurement Management, RFP Section, 111 N.W. 1<sup>st</sup> Street, Suite 1375, Miami, Florida 33128-1974, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this**

**coverage. The mailing address of the Department of Procurement Management, as the certificate holder, must appear on the certificate of insurance.**

3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
4. Professional Liability Insurance in an amount not less than \$250,000 with a deductible per claim not to exceed ten percent (10%) of the limit of liability.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

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

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

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

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

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

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the

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

#### **ARTICLE 11. 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 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR**

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

**ARTICLE 13. 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 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER**

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

arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.

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

#### **ARTICLE 15. MUTUAL OBLIGATIONS**

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

#### **ARTICLE 16. 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 17. AUDITS**

The Contractor agrees that 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, and shall only address those transactions related to this Agreement.

The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

**ARTICLE 18. SUBSTITUTION OF PERSONNEL**

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 19. 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.

The County will not unreasonably deny a request for assignment of this Agreement, if the County determines that the Contractor's management team at the time of the signing of this Agreement was not significantly changed as a result of such assignment.

**ARTICLE 20. 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 Provider and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

#### **ARTICLE 21. 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 22. 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 23. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK**

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.

- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- d) 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 noncancelable 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
- e) In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:
  - i. portion of the Services completed in accordance with the Agreement and the Work Order up to the Effective Termination Date; and
  - ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and Work Order and has been specifically developed for the sole purpose of this Agreement Work Order but not incorporated in the Services.
  - iii. if County exercises its right to terminate this agreement and Contractor has not been paid in full for its Software, then in such event County must remove any of Contractor software from its system and agree to stop using it immediately.
- f) All compensation pursuant to this Article is subject to audit.

**ARTICLE 24. EVENT OF DEFAULT**

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:
- i. the Contractor has not delivered Deliverables on a timely basis.
  - ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
  - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
  - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
  - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
  - vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;
  - vii. the Contractor has failed in the representation of any warranties stated herein.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the time frame set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:
- i. treat such failure as a repudiation of this Agreement;
  - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event 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 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION**

If an Event of Default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor

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

#### **ARTICLE 26. 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 procurement of Services, including procurement and administrative costs; and,
- c) such other direct damages,
- d) However, in no event shall Contractor be responsible for incidental, consequential, exemplary or other indirect damages. Additionally, Contractor's aggregate liability shall not exceed the amount paid by the County to Contractor for the Software.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default.

The County may also bring any suit or proceeding for specific performance or for an injunction.

#### **ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION**

- a) 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 patent, copyrights, service marks, trade secret, or any other third party proprietary rights.
- b) 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.
- c) 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).

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

#### **ARTICLE 28. CONFIDENTIALITY**

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents,

subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

#### **ARTICLE 29. PROPRIETARY INFORMATION**

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

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

During the term of the contract, the contractors will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

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

#### **ARTICLE 30. 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 of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.
- b) All rights, title and interest in and to certain inventions, ideas, designs and methods,

specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.

- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

## **ARTICLE 31. BUSINESS APPLICATION AND FORMS**

### **Business Application**

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

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

subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

## **ARTICLE 32. INSPECTOR GENERAL REVIEWS**

### **Independent Private Sector Inspector General Reviews**

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

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

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

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

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

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

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

### **ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS**

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

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".

- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

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

#### **ARTICLE 34. NONDISCRIMINATION**

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

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

#### **ARTICLE 35. CONFLICT OF INTEREST**

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
  - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the

revenues; or

- ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

#### **ARTICLE 36. 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 37. 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 unless the petition is involuntary and dismissed within 90 days of filing, 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 unless County continues to receive full maintenance support for the Software by Contractor

#### **ARTICLE 38. GOVERNING LAW**

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

#### **ARTICLE 39. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION**

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

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the County;
6. Making PHI available to the County for review and amendment; and incorporating any amendments requested by the County;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its County's written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

#### **ARTICLE 40. COUNTY USER ACCESS PROGRAM (UAP)**

##### **a) User Access Fee**

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

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

**b) Joint Purchase**

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

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

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

**c) Contractor Compliance**

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 24 of this Contract.

**ARTICLE 41. PAYMENT SCHEDULE**

Payment of \$100,000.00 shall be made by County to Contractor at contract signing.

Payment of \$100,000.00 shall be made by County to Contractor thirty (30) calendar days after contract signing.

Payment of \$106,798.00 shall be made by County to Contractor sixty (60) calendar days after contract signing, or at completion of County testing and acceptance, whichever comes first.

County shall pay Contractor \$29,657.00, on the day after the first anniversary of the signing of this contract to cover recurring costs (Year Two) as specified in the table below.

County shall pay Contractor \$29,657.00, on the day after the second anniversary of the signing of this contract to cover recurring costs (Year Three) as specified in the table below.

County shall pay Contractor for any optional services and additional software modules requested by County as part of this Agreement. The dollar amount for such optional services

and modules shall not exceed a total of \$29,657.00 as specified in the table below (Contingency Allocation.)

Description	Cost
Software	\$258,276.00
Implementation	\$18,000.00
Hosting - Initial setup	\$865.00
Hosting - Yearly*	\$3,480.00
Assurance - Yearly*	\$26,177.00
<b>Year One Total</b>	<b>\$306,798.00</b>
Year Two*	\$29,657.00
Year Three*	\$29,657.00
Contingency Allocation	\$29,657.00
<b>TOTAL</b>	<b>\$395,769.00</b>

\* Annually recurring Maintenance and Assurance costs.

#### ARTICLE 42. OPTIONAL SERVICES

Should County request services for election night coverage, especially for the first few elections that the County will be experiencing with the new software, Contractor will agree to provide said services onsite at County premises for time and materials (which would equal an hourly rate of \$150/hr and actual travel expenses that fall within the appropriate County guidelines for travel expenses).

Assurance and Hosting will be paid at the annual rate of \$29,657.00, for the two available Option-To-Renew years on the day after the anniversary day following the initial contact term.

#### ARTICLE 43. 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.

*(Balance of Page Intentionally Left Blank)*

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

Contractor

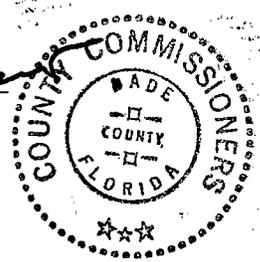
Miami-Dade County

By: [Signature]  
Name: Marc J. FRATELLO  
Title: CEO  
Date: 3/13/06

By: [Signature]  
Name: Miriam Singer  
Title: DPM Director  
Date: May 17, 2006

Attest: \_\_\_\_\_  
Corporate Secretary

Attest: [Signature]  
Clerk of the Board

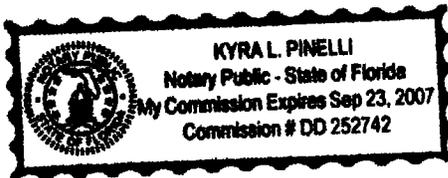


Corporate Seal

Approved as to form and legal sufficiency

[Signature]  
Assistant County Attorney

On this 13<sup>th</sup> day of March 2006  
Appeared before me Marc Fratello  
who has provided valid FLDL  
[Signature]



**APPENDIX A**  
**SCOPE OF SERVICES**

## APPENDIX A – SCOPE OF SERVICES

### Web based Poll Worker Curriculum providing the following:

- Vendor will host entire solution, including all applications required for this implementation.
- State of Florida Poll Worker supplemental for Certification Training
- Miami-Dade County specific Department of Elections guidelines
- Customized training courses, test banks and custom search ability.
- Training modules with examples, illustrations and interactive tests
- Custom videos to augment on-site training
- Minimum of 3 hours training for Elections Clerks and Assistant Clerks
- Minimum of 2 hours training for Inspectors
- Provide Train the Trainer Training
- Ability to provide blast e-mails to selected groups
- Ability to calendar upcoming events
- Ability to customize text, graphics and media information.
- All Training Modules will be subject to Miami-Dade County Department of Elections approval

### On-line web based requirements for Election Night Reporting must provide the following:

- On-Demand Reporting once tabulation begins
- Ability to report by precinct tabulation results including both text and graphics with customizable colors
- Ability to provide an interface with Miami-Dade Television
- Must show percentage of votes by candidate and/or ballot question
- Must have the capability to semi-automatically upload tabulation results to the State of Florida secure website by simultaneously sending data using File Transfer Protocol (FTP) to the State of Florida's Division of Elections.
- Must have the ability to receive information from our existing ES&S Election Reporting Manager (ERM) module of Unity Software version 2.4.4 or higher
- Provide onsite support during first go-live election from planning through final tally

### Project Planning

- Provide a full project timeline for go-live by April 1<sup>st</sup>, 2006 and completion by June 2006.
- Must provide means to effectively communicate project status. (E.g.: Microsoft Project Plan)
- Anticipate and respond to changes quickly to ensure the project is completed on time.
- A detailed schedule will be created by SOE that ties together the tasks and resources with inter-dependencies along a time line.
- The Project Plan will be approved by the Elections Department. The Project will be signed at each interval by the Elections Department's designee.

### Disaster Recovery

- Facilities must have disaster recovery plans in place.
- The facilities must be at a minimum Tier 1 level Disaster Recovery sites. The Disaster Recovery plan must also include a mirrored Tier 1 Level Disaster Recovery in a different state.
- Tests for disaster recovery plans shall be conducted annually to validate recovery processes, response times, and process effectiveness. The results of the fail-over testing will be approved and signed by the Elections Department.

- System must maintain an updated employee contact list and contact information of all Contractor employees involved in this contract, along with a clear description of their respective roles and responsibilities and escalation path.
- Redundancies in the facility design (power, uninterrupted power supply, network elements) are required.
- Facility architecture should be designed with no single point of failure.
- Components to be dual-homed. Upon failure, network convergence will not take more than 2 minutes.
- Active and backup hardware needed.
- In the event of a disaster, all service must be transferred to an alternate facility in order to continue to provide the service as usual.
- Must provide 24 hour, seven days per week, County service hosting support with full redundancy, including implementation and customization professional services.

#### **Technical Support Resolution and Response Criteria and requirements**

- Level 1. Critical Business Function is down without a work-around: Response within 1 hour – Final Resolution within 24 hours
- Level 2. Major Business Function impaired or degraded: Response within 4 hours – Final Resolution within 2 days
- Level 3. Minor Business Function down or impaired, lacks significant current activity impact, performance is degraded: Response time within 1 day. – Resolution within 1 week
- Level 4. Non-critical Function down or impaired, with no business impact: Response within 1 day – Resolution negotiable within 1 month.

The most critical need for this requested solution is for the Elections Department. The Elections Department conducts numerous training to over 8,000 poll workers on a yearly basis and must maintain on-going recruitment and training in order to provide election staff support in all of the polling locations throughout Miami-Dade County. Election night reporting is also a critical process of the tabulation of votes, reporting to the local media and to the State. The requested computerized system will allow the Elections Department to schedule aggressive training and implement a solid election night reporting tool which will provide accurate and efficient training results.

**APPENDIX B**

**IMPLEMENTATION PLAN – ONLINE ELECTION TRAINING SOFTWARE**



Miami-Dade County - Implementation Plan for Clarity Training - High-Level

Order	Task Name	Duration Days	Start Date	End Date
1	Recruitments - Information gathering	10d	Mon 1/30/06 8 AM	Fri 2/10/06 5 PM
2	Obtain necessary Election Worker Data from Customer	4d	Mon 1/30/06 8 AM	Thu 2/2/06 5 PM
3	Discuss and verify security issues and requirements	1d	Mon 1/30/06 8 AM	Mon 1/30/06 5 PM
4	Collect and verify current Election Worker Training content	8d	Mon 1/30/06 8 AM	Wed 2/8/06 5 PM
5	Local Content kickoff meeting	1d	Thu 2/9/06 8 AM	Thu 2/9/06 5 PM
6	Schedule video, audio and photo shoots for personalization	1d	Fri 2/10/06 8 AM	Fri 2/10/06 5 PM
7	Implementation	23d	Mon 2/13/06 8 AM	Wed 3/15/06 5 PM
8	Customization of Assets for Miami-Dade	14d	Mon 2/13/06 8 AM	Thu 3/2/06 5 PM
9	Video Shoot	2d	Mon 2/13/06 8 AM	Tue 2/14/06 5 PM
10	Audio and Voice over	2d	Wed 2/15/06 8 AM	Thu 2/22/06 5 PM
11	Editing and Digitization	5d	Fri 2/17/06 8 AM	Thu 2/23/06 5 PM
12	Script changes and asset editing with County approvals	5d	Fri 2/24/06 8 AM	Thu 3/2/06 5 PM
13	Beta Review by Miami-Dade for Flow and Content	8d	Fri 3/3/06 8 AM	Wed 3/15/06 5 PM
14	Change management and editing	4d	Fri 3/3/06 8 AM	Wed 3/8/06 5 PM
15	Final Edits and asset signoff by Miami-Dade	5d	Thu 3/9/06 8 AM	Wed 3/15/06 5 PM
16	Delivery	8d	Thu 3/16/06 8 AM	Wed 3/22/06 12 PM
17	Server access and testing	1d	Thu 3/16/06 8 AM	Thu 3/16/06 5 PM
18	Auto enrollment of election Workers - and UserID and Password assignment	3d	Thu 3/16/06 8 AM	Mon 3/20/06 5 PM
19	Final testing and Delivery	3d	Tue 3/21/06 8 AM	Fri 3/24/06 12 PM
20	Training Sessions - Train-the-Trainer Programs	2.5d	Fri 3/24/06 1 PM	Wed 3/29/06 12 PM



**APPENDIX C**

**IMPLEMENTATION PLAN – ELECTION NIGHT REPORTING SOFTWARE**



**Miami-Dade Implementation Plan for Election Night Reporting - High-Level**

Order	Task Name	Work Hours	Duration Days	Start Date	End Date	Jan 29 - 2006	FEB 5 - 2006	FEB 12 - 2006	FEB 19 - 2006
						S M T W T F S	S M T W T F S	S M T W T F S	S M T W T F S
1	Requirements - Information Gathering	173.00	5d	Mon 1/30/06 8 AM	Fri 2/3/06 5 PM	█			
2	List of cities and included precincts	32.00	4d	Mon 1/30/06 8 AM	Thu 2/2/06 5 PM	█			
3	Request email addresses for various aspects of public website	8.00	1d	Mon 1/30/06 8 AM	Mon 1/30/06 5 PM	█			
4	Special graphics if requested	16.00	2d	Mon 1/30/06 8 AM	Tue 1/31/06 5 PM	█			
5	Obtain Necessary Data from Customer	80.00	5d	Mon 1/30/06 8 AM	Fri 2/3/06 5 PM	█			
6	Tab System Report files	40.00	5d	Mon 1/30/06 8 AM	Fri 2/3/06 5 PM	█			
7	Shapefiles for precinct boundary	40.00	5d	Mon 1/30/06 8 AM	Fri 2/3/06 5 PM	█			
8	Checklist for Customer Data	0.00		Mon 1/30/06 8 AM	Mon 1/30/06 8 AM				
9	List of precincts and polling places (for Election ID = 0)	32.00	4d	Mon 1/30/06 8 AM	Thu 2/2/06 5 PM	█			
10	Discuss Security Issues	5.00		Mon 1/30/06 8 AM	Mon 1/30/06 8 AM				
11	Verify file transfer capability (FTP)	2.00		Mon 1/30/06 8 AM	Mon 1/30/06 8 AM				
12	Resolve any firewall related issues	2.00		Mon 1/30/06 8 AM	Mon 1/30/06 8 AM				
13	Implementation	211.00	6d	Mon 1/30/06 8 AM	Mon 2/6/06 5 PM	█			
14	Setup Server Hardware	40.00	5d	Mon 1/30/06 8 AM	Fri 2/3/06 5 PM	█			
15	Setup a Staging user for testing	1.00		Mon 1/30/06 8 AM	Mon 1/30/06 8 AM				
16	Verify Functionality	8.00	1d	Mon 1/30/06 8 AM	Mon 1/30/06 5 PM	█			
17	Create/obtain header-banner image for error and printer-friendly pages	4.00		Mon 1/30/06 8 AM	Mon 1/30/06 12 PM	█			
18	Create a new build with correct app.config	2.00		Mon 1/30/06 8 AM	Mon 1/30/06 10 AM	█			
19	HTMLize the online presentation	32.00	4d	Mon 1/30/06 8 AM	Thu 2/2/06 5 PM	█			
20	Verify functionality	8.00	1d	Mon 1/30/06 8 AM	Tue 1/31/06 9 AM	█			
21	Create project branch in source control	1.00		Mon 1/30/06 8 AM	Mon 1/30/06 9 AM				
22	Election Night Reporting	18.00	6d	Mon 1/30/06 8 AM	Mon 2/6/06 5 PM	█			
23	PRMap	13.00	1d	Mon 2/6/06 8 AM	Mon 2/6/06 5 PM	█			
24	Create ImageMap	8.00	1d	Mon 2/6/06 8 AM	Mon 2/6/06 5 PM	█			
25	Mock partially completed election	1.00		Mon 2/6/06 8 AM	Mon 2/6/06 9 AM	█			
26	Verify Functionality	4.00		Mon 2/6/06 9 AM	Mon 2/6/06 2 PM	█			
27	RT Results	5.00		Mon 1/30/06 8 AM	Mon 1/30/06 2 PM	█			
28	Setup FTP to website	1.00		Mon 1/30/06 8 AM	Mon 1/30/06 9 AM				
29	Setup FTP to State	1.00		Mon 1/30/06 9 AM	Mon 1/30/06 10 AM				
30	Verify Functionality	3.00		Mon 1/30/06 10 AM	Mon 1/30/06 2 PM	█			
31	Setup web in IIS (default page to Login.aspx)	1.00		Mon 1/30/06 8 AM	Mon 1/30/06 9 AM				
32	Delivery	13.00	1d	Tue 2/7/06 8 AM	Tue 2/7/06 5 PM	█			
33	Setup backup plan	2.00		Tue 2/7/06 1 PM	Tue 2/7/06 3 PM	█			
34	Test Connectivity	0.00		Tue 2/7/06 8 AM	Tue 2/7/06 8:30 AM	█			
35	Test FTP to web server (for PR Map)	0.00		Tue 2/7/06 8 AM	Tue 2/7/06 8:30 AM	█			
36	Live Server Setup	7.00		Tue 2/7/06 8 AM	Tue 2/7/06 12 PM	█			
37	IIS Installation	2.00		Tue 2/7/06 8 AM	Tue 2/7/06 10 AM	█			
38	SQL Server 2000 or MSDE	2.00		Tue 2/7/06 8 AM	Tue 2/7/06 10 AM	█			
39	Net Framework v1.1	2.00		Tue 2/7/06 8 AM	Tue 2/7/06 12 PM	█			
40	Upload DB	1.00		Tue 2/7/06 10 AM	Tue 2/7/06 11 AM	█			
41	Install PRMap and RTResults	4.00		Tue 2/7/06 1 PM	Tue 2/7/06 5 PM	█			
42	Test & Wrapup	10.00	4d	Wed 2/8/06 8 AM	Mon 2/13/06 5 PM	█			
43	Verify local dev server has identical DB, styles.css and web.config to live site	2.00		Wed 2/8/06 8 AM	Wed 2/8/06 10 AM	█			
44	Verify correct content shows on website	8.00	4d	Wed 2/8/06 8 AM	Mon 2/13/06 5 PM	█			
45	Training - Sessions	0.00	1d	Mon 2/20/06 8 AM	Mon 2/20/06 5 PM	█			

**APPENDIX D**

**MAINTENANCE AND SUPPORT and SOFTWARE LICENSE AGREEMENT**

## 1. SOFTWARE MAINTENANCE SERVICES

The software maintenance services (the "Maintenance") provided by **CONTRACTOR** to the **COUNTY** hereunder are in consideration of the annual charge described in Article 41 of this agreement, the Payment Schedule. The Maintenance shall consist of:

- 1.1. Unlimited telephone or electronic mail support monthly directed at providing **COUNTY** with operational support with respect to the use and operation of the software programs licensed to **COUNTY** by **CONTRACTOR** in accordance with the software license agreement(s) between the parties (the "Software"). However, the unlimited support does not include training, or any other method of educating **COUNTY** or **COUNTY**'s employees on the Software.
- 1.2. Delivery of all standard updates where applicable, exclusive of **COUNTY**-unique modules, to the Software that **CONTRACTOR** makes generally available without charge to its other maintenance customers during the term of this Agreement. Such updates shall be considered Software and shall be governed by the software license agreement between the parties with respect to the Software which such update relates.
- 1.3. Use of **CONTRACTOR**'s reasonable commercial efforts to correct errors in the Software. Errors are defined as the failure of the Software to operate in substantial conformity to the applicable documentation provided by **CONTRACTOR** to **COUNTY** for such Software.
- 1.4. Acting as **COUNTY**'s representative in discharging **COUNTY**'s rights under any third party maintenance agreements purchased by **COUNTY** through **CONTRACTOR**.

## 2. ADDITIONAL SERVICES

**COUNTY** may request **CONTRACTOR** to perform services of a different nature than, or beyond the scope of, those described above, and **CONTRACTOR** may provide such services ("Additional Services") and shall be compensated therefore by **COUNTY** at rates for such services as are customarily charged by **CONTRACTOR**. Examples of such Additional Services are:

- 2.1. Retrieval of data lost by hardware malfunction or operator error.
- 2.2. Retrieval of data lost by power failure.
- 2.3. Designing, programming, or testing of Software enhancements.
- 2.4. Problem diagnosis of Software problems where the Software enhancement or change was developed by **COUNTY**.
- 2.5. Changes required to **COUNTY** unique modifications to interface with updates to the standard version of the Software.
- 2.6. Training and instruction (other than what is provided with normal implementation).
- 2.7. System tuning, configuration and reconfiguration.
- 2.8. Repair of data which is damaged due to **COUNTY**'s improper use of the system, including but not limited to **COUNTY**'s direct modification of data in the database.

## 3. METHOD OF PROVIDING SERVICE

- 3.1. **CONTRACTOR** shall provide to **COUNTY** the Maintenance and the Additional Services by any of the methods herein described, the selection of the method to be utilized and the personnel to be utilized to perform such Maintenance and Additional

services being solely within the control of **CONTRACTOR**: (i) by means of telephone computer hook-up; (ii) by means of telephone communications; (iii) by means of telecopy or mail; (iv) by means of a personal, on-site visit; or (v) by means of the Internet.

- 3.2. **CONTRACTOR** will schedule all Maintenance and Additional Services enough time in advance as to be able to provide such services during **CONTRACTOR**'s normal business hours, excluding legal holidays, with prior agreement from the **COUNTY**. **CONTRACTOR** understands that Elections proceedings frequently extend beyond normal business hours and although **CONTRACTOR** will attempt to minimize having to provide Maintenance and Additional Services outside of **CONTRACTOR**'s normal business hours, **CONTRACTOR** shall provide support services beyond these hours, when required, at no additional charge.

#### 4. **ADDITIONAL EXPENSES**

The annual charge shall not include the following items or additional expenses for which a separate charge shall be made by **CONTRACTOR** to **COUNTY** in accordance with **CONTRACTOR**'s normal schedule of charges for such items ("Additional Expenses") as long as **COUNTY** gives to **CONTRACTOR** prior written approval:

- 4.1. All media costs including, without limitation, diskettes, tapes and the like, and all shipping and handling charges and taxes hereon.
- 4.2. Travel expenses of **CONTRACTOR** personnel for on-site visits to perform Implementation Services of Additional services or Maintenance of Additional services hereunder. Contractor agrees to adhere to CH. 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses as indicated in Article 7 of this Agreement (Payment for Services/Amount Obligated.)

#### 5. **LIMITATIONS OF LIABILITY**

- 5.1. **COUNTY** is solely responsible for ensuring that all site content is accurate and conforms to all federal, state, and local laws and does not give rise to any civil or criminal claims; **CONTRACTOR** shall not be responsible for ensuring such. Additionally, SOEWeb includes various standard online forms initially provided by **CONTRACTOR** (such as a state Voter Registration form and an Absentee Ballot Request Form) which voters can fill out and submit to the **COUNTY**. The content of these forms may vary to meet state and local regulations and/or standards. It is **COUNTY**'s responsibility to review these forms and ensure that all online forms and related PDFs (such as the Voter Registration and Absentee Ballot Request forms) meet applicable regulations and standards and to notify **CONTRACTOR** if changes are necessary to bring those forms and PDFs in compliance.
- 5.2. **CONTRACTOR SHALL NOT BE RESPONSIBLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR OTHER INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF DATA OR LOSS OF USE DAMAGES) WHICH COUNTY MAY INCUR OR EXPERIENCE ARISING FROM THE MAINTENANCE OR THE ADDITIONAL SERVICES OR ON ACCOUNT OF ENTERING INTO OR RELYING ON THIS AGREEMENT, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

#### 6. **PAYMENTS OF CHARGES**

- 6.1. In consideration of the provision by **CONTRACTOR** of the Maintenance described in this Agreement and outlined in Schedule A of the License Agreement, **COUNTY** agrees to pay to **CONTRACTOR**:
  - 6.1.1. the Annual Charge on a once per year basis beginning and continuing on an annual basis as outlined in this agreement.
  - 6.1.2. all charges for any approved Additional Expenses – for which the **CONTRACTOR** has received prior written approval - on a monthly basis.
- 6.2. **CONTRACTOR** reserves the right to charge for Maintenance at its current per diem rate, in addition to the normal Monthly Charge, if in **CONTRACTOR**'s judgement **COUNTY** does not have adequately trained staff. In such a case, the **COUNTY** will be notified seven (7) days in advance of such charges. Where required, **CONTRACTOR** will make available training at the then current rates.
- 6.3. **CONTRACTOR** reserves the right to levy a surcharge for Maintenance of any Software not conforming to a supported release.
- 6.4. **CONTRACTOR** reserves the right to withhold Maintenance under this Agreement if **COUNTY**'s account with **CONTRACTOR** is not current, whether or not such account is for Maintenance rendered under this Agreement, Software licensed by **CONTRACTOR** or other third party software or services provided by **CONTRACTOR**.
- 6.5. Payments for Additional Services shall become due and payable upon **COUNTY**'s receipt of an invoice for such Additional Services, which shall be billed monthly. However, no additional services will be provided without the prior consent and approval of **COUNTY**.
- 6.6. Except as provided otherwise in this Agreement, **COUNTY** will reimburse **CONTRACTOR** for actual out-of-pocket expenses incurred in rendering performing Additional Services under this Agreement.

## 7. GENERAL

- 7.1. **COUNTY** acknowledges that the assistance and cooperation of **COUNTY**'s personnel is essential to satisfactory providing of Maintenance and performance of Additional Services. Accordingly, **COUNTY** agrees to assign a liaison person who will assist and cooperate with **CONTRACTOR** in the providing of Maintenance and the performance of Additional Services. **CONTRACTOR** may, from time to time, provide to **COUNTY** a progress report indicating matters needing greater attention from **COUNTY**'s liaison person; **COUNTY** agrees to act promptly on any such recommendations or notify **CONTRACTOR** in writing as to its intentions.
- 7.2. **COUNTY** shall make available to **CONTRACTOR** at all times access to the Software so that **CONTRACTOR** may conduct any necessary on-site work. **COUNTY**, at its own expense, shall provide a data access arrangement suitable to enable **CONTRACTOR** with the Software and the equipment running such Software.
- 7.3. **CONTRACTOR** acknowledges that certain voter registration system data may include private information matching individual names with addresses and agrees not to release that information to third parties.
- 7.4. This Agreement shall not be assignable by **COUNTY** without prior written consent of **CONTRACTOR**, which shall not be unreasonably withheld, and any attempt to assign any rights, duties or obligations which arise under this Agreement without such consent will be void. This Agreement may be assigned by **CONTRACTOR** upon giving **COUNTY** written notice. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.

- 7.5. **COUNTY** acknowledges that it has not been induced to enter into this Agreement by any representation or warranty not set forth in this Agreement. This Agreement contains the entire Agreement of the parties with respect to its subject matter and supersedes all existing agreements and all other oral, written or other communications between them concerning its subject matter; provided, however, that with respect to updates delivered to **COUNTY** pursuant to this Agreement, the software license agreement governing such updates shall also be part of the entire agreement of the parties with respect to such updates. This Agreement may only be modified by a written agreement signed by **CONTRACTOR** and **COUNTY**. Terms and conditions as set forth in any purchase order which differ from, conflict with, or are not included in this Agreement, shall not become part of this Agreement unless specifically accepted by **CONTRACTOR** in writing.
- 7.6. If any provisions of this Agreement (or any portion thereof) shall be held to be invalid, illegal or enforceable, the validity, legality or enforceability of the remainder of this Agreement shall not in any way be affected or impaired thereby, except no action under this Agreement may be brought by either party more than one (1) year after the cause of action.
- 7.7. The headings in this Agreement are intended for convenience of reference and shall not affect its interpretation.
- 7.8. **CONTRACTOR** shall not be liable or deemed to be in default for any delay or failure to perform under this Agreement or for interruption of the Maintenance or Additional Services provided by **CONTRACTOR** hereunder resulting, directly or indirectly, from any cause beyond **CONTRACTOR**'s reasonable control.
- 7.9. All notices or demands under this Agreement shall be deemed to have been duly given if in writing and delivered or mailed to the address of the party being notified set forth in the front page of this Agreement or to such other address as such party shall have specified in writing to the other party hereto.
- 7.10. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida.
- 7.11. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 7.12. No delay or failure of either party in enforcing against the other party any provision of this Agreement, and no partial or single exercise by either party of any right hereunder, will be deemed to be a waiver of, or in any way prejudice, any right of that party under this Agreement.

## 8. LICENSE

- 8.1. "Software" means the programs listed in this Agreement and any subsequent corrections, versions or enhancements to such programs or documentation which **CONTRACTOR** may furnish to **COUNTY** during the term of this Agreement. The term "Software" shall also include any modified or derived versions of the Software created by **COUNTY** or any third party on **COUNTY**'s behalf, in accordance with this Agreement. The Software shall at all times remain the sole and absolute property of **CONTRACTOR** or its third party vendors. **COUNTY** shall not have any interest in the Software, except for the licenses granted hereunder. The Software is protected by United States and other applicable laws and by international treaty provisions. Any rights not expressly granted herein are reserved to **CONTRACTOR** and its third party vendors.

- 8.2. **CONTRACTOR** grants to **COUNTY** a personal, non-exclusive, non-transferable right and license to use the Software during the term of this Agreement solely for **COUNTY**'s own internal business usage as long as **COUNTY** pays **CONTRACTOR**'s Annual Software Assurance and Support Agreement fees as outlined in Article 41 of this Agreement (Payment Schedule.)
  - 8.3. This License shall commence on the date of this Agreement and shall remain in effect until it is terminated as provided herein. **COUNTY** agrees that upon any such termination for any reason, it will immediately return to **CONTRACTOR** the Software and all portions and copies thereof and shall discontinue all use of the Software.
  - 8.4. The payment for the Software shall be due upon receipt of invoice for Services delivered and accepted by the **COUNTY** as indicated in the Payment Schedule (Article 41.) There shall be added to such fees amounts equal to any taxes, however designated or levied, including without limitation state and local sales and use taxes (but excluding taxes measured on the gross or net income of **CONTRACTOR**) paid or payable by **CONTRACTOR** in respect hereto but recognizing that the **COUNTY** is a tax-exempt authority.
  - 8.5. **COUNTY** agrees to reimburse **CONTRACTOR** for any and all reasonable expenses **CONTRACTOR** may incur, including without limitation reasonable attorney fees, in taking action to collect any amounts due **CONTRACTOR** under this Agreement.
9. **PROTECTION AND SECURITY OF THE SOFTWARE**
- 9.1. **COUNTY** agrees not to provide or otherwise make available any of the Software to any person other than (i) employees of **COUNTY** or **CONTRACTOR** or (ii) with the prior written approval of **CONTRACTOR**, third party consultants or other agents of **CONTRACTOR**. **COUNTY** acknowledges that the Software constitutes **CONTRACTOR** trade secrets and proprietary properties and that all trade secrets, proprietary rights, and any copyrights in or to the Software shall at all times remain with **CONTRACTOR** or its third party vendors. **COUNTY** may make copies of the Software for back-up purposes only. **COUNTY** agrees to include on such copy the same notices or legends of copyright, trade secrets, or proprietary rights, that appear on or in the materials **COUNTY** receives from **CONTRACTOR**.
  - 9.2. **COUNTY** agrees not to assign, sub license or otherwise transfer the Software, by operation of law or otherwise, in whole or in part, directly or indirectly. **COUNTY** also agrees to take all appropriate action by instruction, agreement, or otherwise with its employees to satisfy its obligations under this Agreement with respect to limitation of use, and ensuring the continued confidentiality and trade secret status of the Software. **COUNTY** shall notify **CONTRACTOR** in writing of any person or entity obtaining unauthorized knowledge about or making unauthorized use of the Software, as soon as **COUNTY** shall learn of such occurrence. From time to time, **CONTRACTOR** may inquire concerning **COUNTY**'s compliance with its obligations under this Agreement and may require **COUNTY** to take any additional reasonable protective measures. No employee of **COUNTY** shall be permitted to copy or retain the Software for any purpose except as set forth in this Agreement, and no employee shall be permitted to retain any Software or related documentation after termination of his employment by the **COUNTY**.
  - 9.3. **COUNTY** may not cause or permit the disclosure, copying, renting, licensing, sublicensing, leasing, dissemination or other distribution of the Software by any means or in any form. Except as provided in this subsection (9.3), **COUNTY** may not modify, enhance, supplement, create derivative work from, adapt, translate, reverse

engineer, decompile, disassemble or otherwise reduce the Software to human readable form. **CONTRACTOR** may at its discretion publish official Application Programming Interfaces (API's) as part of the licensed software. For purposes only of data entry and retrieval, **COUNTY** may utilize these published API's, provided that **COUNTY**'s use is in accordance with all of **COUNTY**'s API documentation and that **COUNTY** uses only the latest versions which **CONTRACTOR** makes available to **COUNTY**.

- 9.4. The source code for the Software ("Source Code") shall not be disclosed to **COUNTY**. At **COUNTY**'s request, **CONTRACTOR** shall deposit the Source Code into a technology escrow agreement ("Escrow Contract") between **CONTRACTOR** and a source code escrow service at **COUNTY**'s expense. **COUNTY** shall have the right to become a designated beneficiary under such Escrow Contract by giving written notice to the source code escrower, with a copy to **CONTRACTOR**. **CONTRACTOR** shall establish a multi-party escrow account with said escrower containing a copy of the Source Code in accordance with the terms and conditions stated in such Escrow Contract. Among other things, such Escrow Contract shall provide for: (i) updating of the deposit of the Source Code, as the Source Code is revised by **CONTRACTOR** from time to time; (ii) release of the Source Code to **COUNTY** upon **CONTRACTOR**'s insolvency; and (iii) if ever released to **COUNTY**, use of such Source Code by **COUNTY** on a non-exclusive basis for the sole purpose of performing the tasks which would otherwise have been performed by **CONTRACTOR** hereunder or under the Annual Software Assurance and Support Agreement.

## 10. INTELLECTUAL PROPERTY INDEMNIFICATION

- 10.1. **CONTRACTOR** will defend, or will have a third party defend, and **COUNTY** agrees to give reasonable assistance to **CONTRACTOR**, any suit brought against **COUNTY** based on a claim that the Software, or any part of it, furnished under this Agreement, infringes the U.S. intellectual property rights of any third party or constitutes a misappropriation of the trade secrets of a third party, if notified promptly in writing of any claim of infringement and given authority, information, and assistance (at **CONTRACTOR**'s, or such third party's expense) to handle or settle the claim and for the defense of any suit or proceeding, and will pay all damages and costs finally awarded against **COUNTY**. If there is a claim, or if in **CONTRACTOR**'s opinion a claim is likely to occur, **COUNTY** agrees to permit **CONTRACTOR** (or a third party), at its expense and at its option, either to procure for **COUNTY** the right to continue using the Software, or any part of it, or replace it with a non-infringing product, or modify it so it becomes non-infringing; or if the foregoing cannot be reasonably accomplished, terminate this Agreement and refund a portion of the paid-up license charge based on a three (3) year straight line depreciation. **CONTRACTOR** shall not enter into any settlement which imposes liability or restrictions on **COUNTY** without first obtaining **COUNTY**'s prior written consent, such consent not to be unreasonably withheld or delayed.
- 10.2. **CONTRACTOR** has no obligation or liability under this Article (i) for any claim based on the use of the Software, or parts of it, with equipment, software or devices not delivered by **CONTRACTOR** or (ii) when used in a manner for which they were not designed, where such infringement would not have occurred, but for such use; or (iii) where modified by or for **COUNTY**, where such infringement would not have occurred but for such modification.

10.3. This Article 3 constitutes **COUNTY's** sole remedy and **CONTRACTOR's** exclusive liability in the event that the Software infringes on the intellectual property rights of third parties or constitutes a misappropriation of the trade secrets of a third party.

## 11. WARRANTY

11.1. If the Software fails, within the first ninety (90) days after its delivery to **COUNTY**, to meet the applicable specifications in its documentation, **CONTRACTOR** shall make reasonable commercial efforts to correct the deficiency, without additional charge.

11.2. **CONTRACTOR** may request or accept from **COUNTY** backups (electronic, physical, or otherwise) of **COUNTY's** data or files. **COUNTY** acknowledges that **COUNTY** shall not be responsible for storing or maintaining these or any other backups, (whether physical, electronic, or otherwise) which may come into **COUNTY's** possession. **COUNTY** shall not be responsible for safekeeping of any data or files which **COUNTY** delivers to **CONTRACTOR** or permits **CONTRACTOR** to access.

11.3. **COUNTY** shall not modify data in any database used by the Software except via (1) programs delivered by **CONTRACTOR** to **COUNTY** or (2) official Application Programming Interfaces (APIs) published by **CONTRACTOR** for such use by **COUNTY** and in accordance with related guidelines published by **CONTRACTOR**. Use of APIs shall be in accordance with all documentation and guidelines pertaining to such use. Modification of data in the database by **COUNTY** other than as specified in this paragraph shall invalidate all warranties under this agreement.

## 12. LIMITATIONS OF LIABILITY

13.1 **COUNTY** is solely responsible for ensuring that all site content is accurate and conforms to all federal, state, and local laws and does not give rise to any civil or criminal claims: **CONTRACTOR** shall not be responsible for ensuring such.

13.2 **CONTRACTOR AND ITS THIRD PARTY VENDORS SHALL NOT BE RESPONSIBLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR OTHER INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOSS OF DATA OR LOSS OF USE DAMAGES) WHICH COUNTY MAY INCUR OR EXPERIENCE ARISING FROM THE SOFTWARE OR ON ACCOUNT OF ENTERING INTO OR RELYING ON THIS AGREEMENT, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

## 14. GENERAL

14.1 If **CONTRACTOR** is engaged by **COUNTY** to provide professional services, then **COUNTY** acknowledges that the assistance and cooperation of **COUNTY's** personnel is essential to satisfactory installation of the Software. Accordingly, **COUNTY** agrees to assign a liaison person who will assist and cooperate with **CONTRACTOR** in the installation of the Software, and in the testing of the Software. **CONTRACTOR** may, from time to time, provide to **COUNTY** a progress report indicating matters needing greater attention from **COUNTY's** liaison person; **COUNTY** agrees to act promptly on any such recommendations.

14.2 **COUNTY** shall make available to **CONTRACTOR** at reasonable times access to the Equipment and the Software so that **CONTRACTOR** may conduct any necessary on-site work. **COUNTY**, at its own expense, shall provide a data access arrangement suitable to enable **CONTRACTOR** to communicate via telephone with the Equipment and the Software.

- 14.4 If any provisions of this Agreement (or any portion thereof) shall be held to be invalid, illegal or enforceable, the validity, legality or enforceability of the remainder of this Agreement shall not in any way be affected or impaired thereby.
- 14.5 The headings in this Agreement are intended for convenience of reference and shall not affect its interpretation.
- 14.6 CONTRACTOR** shall not be liable or deemed to be in default for any delay or failure to perform under this Agreement or for interruption of the services provided by **CONTRACTOR** hereunder resulting, directly or indirectly, from any cause beyond **CONTRACTOR's** reasonable control.
- 14.7 COUNTY** acknowledges that a breach of any provision of this Agreement by **COUNTY** relating to Software will cause **CONTRACTOR** irreparable injury and damage and therefore may be enjoined through injunctive proceedings in addition to any other rights or remedies which may be available to **CONTRACTOR** at law or inequity.
- 14.8 All notices or demands under this Agreement shall be deemed to have been duly given if in writing and delivered or mailed to the address of the party being notified set forth in the front page of this Agreement or to such other address as such party shall have specified in writing to the other party hereto.
- 14.9 This Agreement shall be governed by, and construed in accordance with, and any arbitration hereunder shall apply, the laws of the State of Florida. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 14.10 No delay or failure of either party in enforcing against the other party any provision of this Agreement, and no partial or single exercise by either party of any right hereunder, will be deemed to be a waiver of, or in any way prejudice, any right of that party under this Agreement, except no action under this Agreement may be brought by either party more than one (1) year after the cause of action.
- 14.11 Absent the express consent of the other party, each party agrees not to solicit, employ, hire, or enter into any business venture or relationship with any person who is employed by the other party and involved with the Software described herein, for a period ending twenty-four (24) months after the date on which such person ceased to be employed by the other party.
- 14.12 COUNTY** grants **CONTRACTOR** an unrestricted license to use in its promotional materials pictures of **COUNTY's** original web site as well as any new web sites **CONTRACTOR** delivers to **COUNTY**.

**APPENDIX E**  
**ONGOING SERVICE AND SUPPORT**

## APPENDIX E

## ONGOING SERVICE AND SUPPORT

**1. Ongoing Service and Support****a. Normal Support Hours**

Technical support shall be provided to County as specified in the Technical Support Resolution and Response Criteria and requirements section of this Agreement, Appendix A – Scope of Services.

Telephone: 813.490.7149

Email: [soesupport@soesoftware.com](mailto:soesupport@soesoftware.com)

Website: <http://elearning.soesoftware.com/admin/>

**b. After-hours Support**

After hours technical support can be obtained by submitting a Support Request through the administrative section of the online training platform.

**c. Escalation Process**

If a support issue has been created and sent to the account manager that requires programming or other technical related support, the account manager will immediately escalate the issue to the development team.

**d. Historical Frequency of Upgrades**

Upgrades are planned every quarter unless an early release is necessitated by a bug-fix.

**e. Method for Bug Fixes and Patches**

Bug fixes may be applied to server code, client code, database or any combination of the above. In any case, every effort is made to minimize customer impact. In most instances, the patches are applied transparently.

**f. User and Technical Documentation**

User and technical documentation will be provided in the following formats:

PDF Documentation Uploaded Online

RoboHelp Online Documentation

Captivate Movie Files Located Throughout the Platform

Email Newsletter with Tips and Tricks

Dedicated Account Manager for Personal Training

**g. Administrative Process for County Support**

County Admin personnel will have access to the Clarity Training platform admin module. Utilizing the easy to use features of this program you can, edit, add or delete any content from any of the curriculum, courses or lessons.

**h. Operational and System Support**

Operational support of the **hosted** platform is detailed in the Hosting Section. OSS for

the admin tool is all handled online with the customer service personnel. This highlights the strength of the online platform.

**i. County Responsibilities and Skill Levels**

At time of delivery, Miami-Dade County will receive a FULLY functioning elections official training platform. As curriculum modifications are required due to internal process change, state or federal statute changes the county can manage that change with a very easy to use online administration tool. The county worker would need to possess a similar skill level of a basic word processor user.

**j. SOE Responsibilities**

SOE Software is available for additional training, support and consulting services as requested by the county. The Clarity Training platform is designed to be maintained by County personnel through a train-the-trainer program.

**k. SOE Account Management**

The account manager is in charge of the company's relationship with specific customers or clients. The account manager's responsibilities combine project management with customer service. The account manager works with clients, or accounts, to ensure they're getting the most out of her company's products and services. Account managers act as the liaison between a company and its clients. Account managers work closely with clients to determine the clients' needs. Then they make sure their company develops products or services to meet those needs.