

Miami-Dade County Contract No. SS8298-4/14
Master License Agreement No.01961

This Master License Agreement ("MLA") is made and entered into as of this 7th day of August 2007 by and between SAS Institute Inc., a corporation organized and existing under the laws of the State of North Carolina, having its principal office at 100 SAS Campus Drive, Cary, NC 27513-2414 (hereinafter referred to as "Contractor" or "SAS"), 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"). This MLA supersedes and replaces the Program Products License Agreement Number 01961 entered into by the parties on January 28, 1983. This MLA and its Supplements govern County's license of Software listed on the applicable Supplement and any related user documentation or Services provided by SAS. Currently active Supplements 1, 5, 10, 22, & 23, previously executed by the parties are now subject to the terms and conditions of this Agreement.

WITNESSETH:

WHEREAS SAS grants County a nonexclusive, nontransferable and nonassignable license to use the Software with designated operating systems under the Agreement. Except as otherwise provided herein, the Software shall only be accessed by County's employees and on site contractors ("Users") while doing work in the United States solely for County. The license is an annual license renewed at the mutual agreement of the parties. Renewal is accomplished by SAS sending an invoice for the applicable Software license renewal fees and County paying the invoice.

WHEREAS, the County desires to procure from SAS the right to use the Software and any related user documentation in accordance with the terms and conditions of this Agreement. The Software license includes maintenance in the form of technical support, updates, and new releases.

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

ARTICLE 1. DEFINITIONS

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

- a) The words "Contract" or "Agreement" to mean collectively these terms and conditions, and Supplements.
- 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 "Days" to mean Calendar Days.
- e) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Contract.

- f) The word Software to mean SAS' proprietary computer programs and code provided by SAS under this Agreement as set forth in the attached Supplement(s).
- g) The word Documentation to mean those materials developed by SAS' technical writing staff and provided by SAS to County detailing the information and instructions needed in order to allow County's Users to make productive use of the Software.
- h) The word Records shall mean Contract and billing documents directly related to the work performed or monies received under this Agreement.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of the Agreement, the order of precedence is as follows: 1) these terms and conditions and 2) any associated addenda and attachments

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article or section shall be construed as reference to that specified Article or section to this Agreement unless otherwise indicated.
- b) 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 Agreement, nor affect the meaning thereof.

ARTICLE 4. AGREEMENT TERM

The Agreement shall become effective September 1, 2007 and shall be for a duration of three (3) years. The parties, reserve the right to exercise the option to renew this Agreement for a period of four (4) additional years on a year-to-year basis. The County reserves the right to exercise its option to extend this Agreement for up to one hundred-eighty (180) calendar days, subject to SAS' approval, beyond the current Agreement period and will notify SAS in writing of the extension. This Agreement may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and SAS, upon approval by the Board of County Commissioners. Unless otherwise mutually agreed, after the expiration of the three year term, SAS' then current standard license fees shall apply to subsequent renewal periods of other reasonable license fees that may be negotiated between the parties prior to the award of the optional year to renew.

ARTICLE 5. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be made in writing and in English and shall be deemed sufficiently served upon seven (7) days from the date of receipt 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
Enterprise Technology Department
5680 S.W. 87th Avenue
Miami, FL 33173

Attention: Mirta Lopez Cardoso, IT Contracts & Procurement Officer
Phone: (305) 596-8690
Fax: (305) 275-7696

Miami-Dade County
Solid Waste Management Department
2525 N.W. 62 Street
Miami, FL 33147
Attention: Rey Perez, Senior Systems Analyst
Phone: (305) 514-6650
Fax: (305) 514-6874

Miami-Dade County
Aviation Department
Miami International Airport
Concourse B
3rd Floor
Miami, FL 33102-5504
Attention: Carlos J. Garcia, Computer Services Manager
Phone: (305) 876-0878
Fax: (305) 876-0134

Miami-Dade County
Department of Environmental Resources Management
701 N.W. 1st Court
5th Floor
Miami, FL 33136
Attention: Steve Blair, Chief Restoration and Enhancement Section
Phone: (305) 372-6853
Fax: (305) 372-6659

and,

b) to the Contract Manager:

Miami-Dade County
Department of Procurement Management
111 N.W. 1st Street, Suite 1300
Miami, FL 33128-1974
Attention: Julian R. Manduley, Procurement Contracting Officer
Phone: (305) 375-2179
Fax: (305) 375-5688

(2) To SAS

SAS Institute Inc.
100 SAS Campus Drive
Cary, NC 27513-2414
Attention: General Counsel
Phone: (919)677-8000
Fax: (919) 677-4444

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 6. TERRITORY

County may install and use the Software within the United States ("Territory"). County may permit its employees to use Software on a portable computer in countries outside the Territory for up to three (3) months of an annual license period.

ARTICLE 7. GLOBAL REPORT ACCESS

Notwithstanding anything to the contrary herein, and subject to applicable export and import law restrictions, County may allow any party limited access to Software applications to view reports showing results of County's analysis of County's data ("Reports"). County may allow this limited access via the Internet, County's intranet or terminal emulation sessions. County shall ensure such applications (a) reside on Authorized Hardware for which County has licensed the Software and (b) are used solely to view Reports. Such access may occur from within or outside the Territory.

ARTICLE 8. ADDITIONAL USE

Prior to any use of the Software other than as allowed above, the parties must sign appropriate paperwork and County shall pay any applicable additional fees. Such other uses may include, but shall not be limited to, the following: (a) installation or use outside the applicable Territory; (b) use for the benefit of a third party in exchange for compensation; (c) use in facilities management, application or data service provision, outsourcing, time-sharing, data or information technology management, or other similar arrangements; (d) use to process third party data; (e) allowing any party other than Users to use, edit, modify, or otherwise access underlying Software, or to perform free form programming with the Software; or (f) allowing a third party to use the Software for its own business operations or administrative processes.

ARTICLE 9. AUTHORIZED HARDWARE

County shall install the Software only on hardware authorized under the Agreement ("Authorized Hardware"). If the Software is licensed for use on mainframe or server hardware, Authorized Hardware is hardware located on County's premises that County identifies to SAS by type and CPU number. If the Software is licensed for use on personal computers, Authorized Hardware is hardware owned or leased by County or its employees.

ARTICLE 10. FEES AND PRICING METRIC

License fees and usage rights are based on the applicable pricing metric described in future executed Supplements. First year fees are listed on the Supplement. Renewal fees are listed on invoices and may vary each year. Prior to any license renewal period, SAS may propose pricing metric changes. Some pricing metrics are based on use of certain Software offerings as an integrated solution. Accordingly, the Software components in these offerings may be used only through the Software under which they are bundled and County may not use or deploy any individual component as a replacement for other SAS Software.

SAS may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension.

Renewal year license fees for the Software licensed under this Agreement as of the date of execution are set forth in Attachment A.

ARTICLE 11. PRODUCT AUTHORIZATION CODE

County may allow Users to access only Software licensed to County for which County receives a Product Authorization Code. County shall not allow Users to install or attempt to use other products contained on media received from SAS. The "Product Authorization Code" is a component of the Software that enables the Software to operate for the applicable license period. At each new license period, or if required as a result of changes in Authorized Hardware or Software, County must apply a new Product Authorization Code to keep the Software operating. SAS is not required to provide the Product Authorization Code if County is in breach of the Agreement or has not paid any undisputed amounts due under the Agreement. SAS is not liable for damages caused by the resulting Software interruption. County may allow only Users to access the Product Authorization Code. County acknowledges and agrees that the Product Authorization Code is SAS' confidential and proprietary information.

ARTICLE 12. COPYING

County may copy the Software only for (a) disaster recovery and back-up purposes, and (b) installation of personal computer Software authorized hereunder. All copies remain the property of SAS. County may deliver a copy of the Software to a disaster recovery contractor to perform temporary disaster recovery work for County. County shall give SAS the name and address of the disaster recovery contractor before delivery. The identical copyright notices and any other proprietary rights notices found on the original Software media must be reproduced on all copies authorized under this Section.

ARTICLE 13. TITLE; SOURCE CODE

Title to the Software and its documentation remains with SAS and its licensors at all times. Copyright notices and other proprietary rights notices in the Software shall not be deleted or modified. The Agreement does not transfer any ownership rights. Source code from which the Software object code is derived ("Source Code") is not being provided and is a trade secret of SAS and SAS' licensors to which access is not authorized. Neither County nor any other User shall reverse engineer, reverse assemble or decompile the Software or in any way attempt to recreate the Source Code, except and only to the extent applicable laws specifically prohibit such restriction.

ARTICLE 14. TECHNICAL SUPPORT

During the term of the Software license, SAS will use reasonable efforts, either by telephone or in writing, to help County solve specific problems with installation or use of the Software within the Territory. County may obtain on-site Software support from SAS by executing an applicable Supplement with SAS and paying applicable additional fees to SAS. It may not be possible for SAS to solve all problems or correct all errors in the Software. From time to time, SAS may make available, and County agrees to use reasonable efforts to install, new releases, updates and corrective code. During ongoing Software development, SAS may add, change or delete individual components or functionality in new releases. Such Software modifications shall be subject to the terms of the Agreement. If County chooses not to install the most current release of the Software, the level of technical support may diminish over time.

14.1 Technical Support Process. The following paragraphs describe how Technical Support is currently provided at the SAS' worldwide headquarters in Cary, North Carolina between the hours of 9:00 a.m. and 8:00 p.m. eastern standard time, Monday through Friday during normal business days. For calls received for critical issues outside the hours specified above, County will be directed to one of SAS' world-wide support centers (Sydney, Australia or Heidelberg,

Germany) thereby providing Technical Support twenty-four (24) hours a day, seven (7) days a week. This support process may be modified from time to time.

County may contact SAS Technical Support via telephone at 919-677-8008, via FAX at 919-531-9449, via email at support@sas.com or via the World Wide Web at support.sas.com/techsup/intro.html.

Calls to Technical Support are answered by an Assistant Technical Support Analyst who determines the area of the User's problem and directs the call to a phone queue based on product or subject area. There are several queues, each having 1 to 4 first-level representatives ("Technical Support Representative") available at any given time.

The first available Technical Support Representative in the queue handles the call. To reduce hold times when callers are holding in the queue, a message is sent to Technical Support Representatives in the subject group who are not available so that they can make themselves available to receive calls as needed.

When a Technical Support Representative receives a call, he/she obtains background information and a description of the problem, and attempts to answer the question. Technical Support Representatives are able to resolve a majority of problems on primary contact.

If the Technical Support Representative can not answer the question on primary contact, he/she will place the problem in the "outstanding problem" list, include any additional details, and provide the User with a tracking subject area ("Technical Support Consultant").

When a Technical Support Consultant is informed of a new problem in his/her area, he/she accepts the problem into his/her "working" file, and contacts the User. Technical Support's goal for contacting Users on tracked problems depends on the severity of the problem: a 1-hour callback for severe problems; up to a maximum of 24 hours callback for low-priority problems.

The Technical Support Consultant is responsible for the problem until its resolution. He/she may involve SAS Software developers in the process, but will retain ownership of the problem. The Technical Support Consultant updates the problem whenever the User is contacted or additional information is required, enabling a complete audit trail on all problems. Resolved problems are moved to a "resolved" file, and then archived.

The Technical Support tracking system contains various signals to indicate "red flag" conditions, such as callbacks that have not been made, "pink slips" from Users, high-priority problems, or problems that have not been updated within a certain amount of time. Technical Support Consultants can also set their own customizable alarms and can designate "backup" Technical Support Consultants to handle problems when they are out of the office.

Problems submitted through e-mail or the WWW interface immediately go to the "outstanding problem" file and are handled like phone problems but the Technical Support Representative can respond by phone or e-mail

ARTICLE 15. PAYMENT

15.1 Invoices. SAS will invoice County (a) prior to each applicable license period, for any Software license fees due and (b) as specified in the applicable Supplement for any services fees due. Payment terms for all invoices are net thirty (30) days. License fees do not include taxes. Provided County is not tax exempt, SAS will use reasonable efforts to include all taxes

applicable to County on the relevant invoice and County agrees to pay such taxes to SAS; however, County is responsible for taxes on its licensing of the Software. County is not responsible for taxes based on SAS' income. Except as otherwise allowed in the Agreement, refunds are not available after the Product Authorization Code has been provided.

15.2 License Fee Calculations; Upgrades. County agrees to (a) keep records of where the Software is being used and the extent of usage according to the applicable pricing metric, and (b) provide a copy of such records to SAS upon reasonable request. County may call or write SAS to change operating systems, Authorized Hardware or any factor affecting the applicable pricing metric. These changes may result in additional license fees which are effective and will be invoiced as of the time of the change.

15.3 It is the policy of Miami Dade County that payment for all purchases by County agencies shall be made in a timely manner and in accordance with Florida State Statutes, Section 218.74 and 2-8.1.4 of the Miami Dade County Code. All payments due from the County and not made within the time specified in 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.

15.4 Invoices should be sent to the corresponding County departments as follows:

Miami-Dade County
Enterprise Technology Department
5680 S.W. 87th Avenue
Miami, FL 33173
Attention: Mirta Lopez Cardoso, IT Contracts & Procurement Officer

Miami-Dade County
Solid Waste Management Department
2525 N.W. 62 Street
Miami, FL 33147
Attention: Rey Perez, Senior Systems Analyst

Miami-Dade Aviation Department
Accounts Payable
P.O. Box 526624
Miami, FL 33152

Miami-Dade County
Department of Environmental Resources (DERM)
Tania Gundin, Buyer
DERM Office of Computer Services
701 NW 1st Court, Suite 3-122
Miami, Florida 33136
(305) 372-6965 Voice
(305) 372-6840 Fax

ARTICLE 16. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of SAS shall be considered to be, at all times, employees of SAS under its sole direction and not employees or agents of the County.

ARTICLE 17. INDEPENDENT CONTRACTOR RELATIONSHIP

SAS' relationship and the relationship of its employees to the County shall be that of an

independent Contractor and not as employees, servants, and agents of the County.

SAS 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 18. MUTUAL OBLIGATIONS

- a) This 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. Modifications must be in writing, signed by both parties, and specifically reference the Agreement. Additional or different terms on current or future County or third party purchasing documents are expressly objected to and rejected.
- 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.

ARTICLE 19. AUDITS

SAS agrees that upon reasonable notice, 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, at SAS' corporate headquarters, on SAS' normal business days, have access to and the right to examine and reproduce SAS' Records.

County agrees that upon reasonable notice, SAS will have the right to conduct an on-site audit during County's normal business hours to verify compliance with the terms and conditions of the Agreement. County shall cooperate with SAS by: (a) making applicable records available; (b) providing copies of the records requested; and (c) directing all agents to cooperate. If the audit reveals that County owes additional license fees, County shall pay the amounts owed and SAS' reasonable expenses in conducting the audit.

ARTICLE 20. CONSENT REQUIRED FOR ASSIGNMENT

SAS nor County shall 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 other party, which consent shall not be unreasonably withheld. This Agreement shall be binding upon the respective successors and assigns of SAS or the County.

ARTICLE 21. 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 22. TERMINATION

- a) The County may terminate this Agreement if SAS attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b) The County may terminate an annual license for any Software at any time. SAS may terminate the Agreement immediately for any violation by County of SAS' intellectual property rights.

- c) If SAS attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement, SAS may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. SAS 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 SAS and in such event:

- d) SAS shall, upon receipt of such notice, unless otherwise directed by the County:
- i. take no action which will increase the amounts payable by the County under this Agreement.
- e) In the event that the County exercises its right to terminate this Agreement pursuant to this Article 22, SAS will be compensated for license fees due in accordance with Article 15 (Payment).
- f) All compensation pursuant to this Article 22 are subject to audit as set forth in Article 19.
- g) Upon termination or expiration of each Software license hereunder, or when a User, or disaster recovery contractor is no longer authorized to access the Software, County agrees to reclaim, delete, and destroy the Software at issue, along with any related user documentation.

ARTICLE 23. EVENT OF DEFAULT

An Event of Default shall mean a breach of this Agreement by SAS or the County.

ARTICLE 24. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION

If an Event of Default occurs the non-defaulting party will notify the defaulting party ("Default Notice"), specifying the basis for such default, and advising the defaulting party that such default must be cured within a thirty (30) day period or this Agreement or the Software license may be terminated. The non-defaulting party may grant an additional period of such duration as the non-defaulting party shall deem appropriate without waiver of any of the non-defaulting party's rights hereunder, so long as the defaulting party 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 non-defaulting party prescribes.

ARTICLE 25. FORCE MAJEURE

- a) Performance by each party shall be pursued with due diligence in all requirements under this Agreement; however, except as otherwise expressly provided herein, neither party shall be liable to the other for any loss or damage for delay due to causes that were beyond its reasonable control. The parties agree that, provided the condition stated above apply, the following shall include, but not be limited to, causes or events of force majeure: acts of civil or military authority (including courts and regulatory agencies), acts of God (excluding normal or seasonal weather conditions), riot or insurrection, inability to obtain required permits or licenses (other than SAS occupational licenses), blockades, embargoes, sabotage, epidemics and unusually severe floods. The party affected shall promptly provide written notice to the other party indicating the nature, cause, date of commencement thereof, the anticipated extent of such delay and whether it is anticipated

- that any completion or delivery dates will be affected thereby, and shall exercise due diligence to mitigate the effect of the delay.
- b) In the event of any delay resulting from such causes, and provided the affected party has promptly notified the other and exercised due diligence the time for performance under this Agreement (including the payment of monies) shall be extended for a period of time reasonably necessary to overcome the effect of such delay. Such extension of time shall constitute the sole remedy of either party in the event of such delay.
- c) In the event the affected party fails to provide prompt written notice to the other or fails to exercise due diligence as provided in this Article 25 the obligations under this Agreement shall remain the same and the affected party shall be obligated to perform those measures determined by the other party to minimize the impact of such delay at its own expense or be liable to the other party for additional expenses caused by such delay.

ARTICLE 26. LIMITED WARRANTIES AND REPRESENTATION

26.1 Warranties by SAS; Remedies.

26.1.1 SAS warrants it has the right to license the Software to County. The exclusive remedy for breach of this warranty is set forth in Article 28 (Patent and Copyright Indemnification).

26.1.2 SAS warrants each production release of the Software shall substantially conform to its documentation including any updates thereto, and the Software and the media on which it is installed shall be free of software viruses when received by County. As the exclusive remedy for breach of these warranties, SAS at its option shall: (a) repair the Software; (b) replace the Software or (c) terminate the Software license and refund the fees paid for the Software at issue during the then-current license period.

26.2 Warranty Disclaimers. SAS AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING AS A RESULT OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SAS AND ITS LICENSORS DO NOT WARRANT OR REPRESENT THAT THE SOFTWARE WILL RESULT IN COMPLIANCE, FULFILLMENT OR CONFORMITY WITH THE LAWS, RULES, REGULATIONS, REQUIREMENTS OR GUIDELINES OF ANY GOVERNMENTAL AGENCY. SAS' LICENSORS PROVIDE THEIR SOFTWARE "AS IS." NOTHING IN THIS SUBSECTION NEGATES THE EXPRESS WARRANTIES SAS PROVIDES IN THE AGREEMENT.

26.3 Representations by County. County represents it shall (a) implement procedures to verify accuracy of data input and output while using the Software, and (b) inform all parties authorized to use the Software of the relevant terms of the Agreement and any related user documentation, and be responsible for their adherence to such terms. County agrees that the Software and Services, in and of themselves, will not ensure compliance with laws.

ARTICLE 27. EXCLUSIONS OF DAMAGES; LIMITATION OF LIABILITY

27.1 Exclusions of Damages. NEITHER COUNTY, SAS, NOR SAS' LICENSORS ARE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR RELIANCE DAMAGES (ARISING IN TORT, CONTRACT OR OTHERWISE), EVEN IF THEY HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER SAS NOR SAS' LICENSORS ARE LIABLE FOR ANY CLAIM AGAINST THE COUNTY BY A THIRD

PARTY RELATING TO USE OF THE SOFTWARE, EXCEPT AS SET FORTH IN SECTION 28 (INDEMNIFICATION). SAS' LICENSORS ARE NOT LIABLE FOR DIRECT DAMAGES (ARISING IN TORT, CONTRACT OR OTHERWISE) AND DISCLAIM ANY LIABILITY CONNECTED WITH USE OF THE SOFTWARE. THE PARTIES MAKE THESE EXCLUSIONS IN CONSIDERATION OF THE FEES PAID AND LICENSES GRANTED UNDER THE AGREEMENT.

27.2 Limitation of Liability. THE TOTAL AMOUNT COUNTY MAY RECOVER FOR ALL CLAIMS RELATING TO THIS AGREEMENT IS LIMITED IN THE AGGREGATE TO THE FEES PAID FOR THE SOFTWARE AT ISSUE DURING THE RELEVANT LICENSE PERIOD AND FOR THE SERVICES AT ISSUE.

County's sole recourse for recovery of damages arising under this provision shall be against SAS.

27.3 Applicability. This Section does not apply to Article 28 Patent and Copyright indemnification obligations or to either party's violation of the other's intellectual property rights. The limitations in this Section shall apply even if any of the warranties provided in Section 26 fail of their essential purpose. Some jurisdictions do not allow limitations of liability or exclusions for incidental or consequential damages, so certain provisions of this Section may not apply to County; however, they apply to the greatest extent permitted by applicable law.

ARTICLE 28. PATENT AND COPYRIGHT INDEMNIFICATION

- a) SAS warrants that the Software does not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.
- b) SAS shall be liable for any Claim made against County for: (a) copyright, patent, trade secret or other intellectual property rights violation relating to the Software; or (b) bodily injury, death or damage to tangible property, excluding damage to software or data, arising solely from actions for which SAS is legally responsible (each a "Claim"). SAS shall defend any action brought against the County with respect to any such Claim and indemnify, and hold harmless the County, at its own expense, by paying the costs and attorney's fees incurred by County at SAS' direction and any judgment finally awarded against the County or settlement approved by SAS, provided
 - i. County promptly notifies SAS in writing of the Claim thereof;
 - ii. SAS has sole control of the defense of such Claim;
 - iii. County cooperates fully in the defense, investigation and settlement of the Claim.
- c) In the event the Software licensed by the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, SAS shall have the obligation to, at it's option: (i) modify, or replace the Software which provides the same or better functionality as the alleged infringing Software; (ii) procure for the County, at SAS' expense, the rights provided under this Agreement to use the Software; or (iii) terminate the license for the Software at issue and refund the then-current fee paid for such Software.
- d) SAS shall have no obligation hereunder to defend County or to pay any resulting costs, damages, or reasonable attorneys' fees for or with respect to any Claims, actions, or

demands alleging (i) infringement that arises by reason of combination of non-infringing Software, however acquired, with any Software not supplied by SAS or infringement to the extent arising from material alteration of the Software, that was not approved in writing by an authorized SAS representative if such Claim would not have been made but for the County's unapproved modification or alteration; (ii) the direct or contributory infringement of any process patent by County through the use of the Software; (iii) continued allegedly infringing activity by County after it has been notified of the possible infringement; or (iv) as the date the claim arose, County had not installed the latest version of, or update to the Software as instructed by SAS prior to such date, if such Claim would not have been made if the update or latest version had been installed.

THE FOREGOING STATES THE ENTIRE OBLIGATION OF SAS WITH RESPECT TO INFRINGEMENT OR ALLEGATION OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

ARTICLE 29. BUSINESS APPLICATION AND FORMS

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

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

ARTICLE 30. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested Records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit of the Records 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, pertain to performance of the Agreement.

ARTICLE 31. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

For Contractor's Florida facilities, 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, unless the State and County provisions conflict with Federal provisions. In that event, Contractor agrees only to comply with applicable Federal law, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as

amended and applicable to this Contract.

- b) Miami-Dade County Florida, Department of Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All Contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

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

ARTICLE 32. NONDISCRIMINATION

During the performance of this Agreement, 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 Agreement with the County, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or for its facilities located in Miami Dade County, 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 Agreement void. This Agreement 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 Agreement, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 33. CONFLICT OF INTEREST

The Contractor represents that to the best of its knowledge and belief:

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

ARTICLE 34. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall 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) Except as may be required by law, the Contractor and its employees, agents, 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 35. BANKRUPTCY

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

Upon the bankruptcy or insolvency of Contractor, all of County's rights hereunder shall continue in full force and effect in accordance with the provisions of 11 U.S.C. 365(n) or any successor statute

ARTICLE 36. GOVERNING LAW

This Agreement, and all matters relating to this Agreement (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. SAS hereby notifies County that United States export laws and regulations apply to the Software. Both parties agree to comply with these and other applicable export and import laws and regulations. The parties expressly agree to exclude from the Agreement the United Nations Convention on Contracts for the International Sale of Goods

ARTICLE 37. COUNTY USER ACCESS PROGRAM (UAP)

a) User Access Fee

Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Agreement is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Agreement, or any 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 Licensor must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Licensor participation in this joint purchase portion of the UAP, however, is voluntary. The Licensor 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 Licensor 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 Licensor 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 Licensor and shall be paid by the ordering entity less the 2% UAP

c) Contractor Compliance

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

ARTICLE 38. INJUNCTIVE RELIEF

Breach of SAS' or SAS' licensors intellectual property rights will lead to damages not adequately remedied by an award of money; therefore, SAS may protect those intellectual property rights through temporary restraining orders or injunctions, without the obligation of posting bond.

ARTICLE 39. 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 SAS 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.

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

SAS Institute Inc.

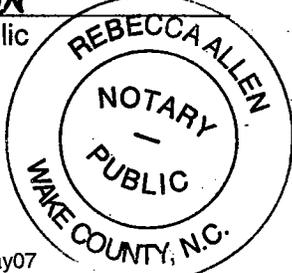
By: *[Signature]*

Name: **Ssas** Victoria P. Clayton
Regional Contracts Manager
Contract Operations
SAS Institute Inc.

Title: _____

Date: **MAY 09 2007**

Attest: *[Signature]*
Notary Public



Notary Seal

Lg100.50./VK006g/07May07

My Commission Expires 5-17-2010

Miami Dade County

By: *[Signature]*

Name: Susan M. Torriente

Title: Asst. County Manager

Date: August 7 2007

Attest: *[Signature]*
Clerk of the Board



Approved as to form and legal sufficiency

[Signature]
Assistant County Attorney

ATTACHMENT A

1. For the Software, operating system, and Authorized Hardware configuration in effect as of the execution of this Agreement, the license renewal fees for the annual license period is as follows:

Agency Name	Site Number	Software	Operating System	Authorized Hardware	2007-2008	2008-2009	2009-2010
Miami Dade County	347	Base SAS	OS	2064-102	\$35,600.00 (Paid)	\$39,160.00	\$43,076.00
Miami Dade County	347	SAS/GRAPH	OS	2064-102	\$30,870.00 (Paid)	\$33,957.00	\$37,352.70
Miami Dade County	38823	Base SAS	VMS	VAX4000M0D6	\$5,940.00	\$6,534.00	\$7,187.40
Miami Dade County	38823	SAS Access Interface to Rdb/VMS	VMS	VAX4000M0D6	\$4,140.00	\$4,554.00	\$5,009.40
Miami Dade County	28501	Base SAS	OS	2064-102	\$35,600.00 (Paid)	\$39,160.00	\$43,076.00
Miami Dade County	28501	SAS/GRAPH	OS	2064-102	\$30,870.00 (Paid)	\$33,957.00	\$37,352.70
Miami Dade County Aviation Dept.	420069	Base SAS	AIXR	H80-4P1C	\$11,660.00	\$12,826.00	\$14,108.60
Miami Dade County Aviation Dept.	62496	Base SAS	AR64	H80-4P1C	\$11,660.00	\$12,826.00	\$14,108.60
Miami Dade County Aviation Dept	62496	SAS/GRAPH	AR64	H80-4P1C	\$9,300.00	\$10,230.00	\$11,253.00

2. For the Software, operating system, and number of workstations in effect as of the execution of this Agreement, the license renewal fees for the annual license period is as follows:

Agency Name	Site Number	Software	Operating System	Number of Workstations	2007-2008	2008-2009	2009-2010
Miami Dade County	66094	Base SAS	WNDW	1	\$1,163.00	\$1,279.30	\$1,407.23
Miami Dade County	66094	SAS/Stat	WNDW	1	\$788.00	\$866.80	\$953.48

3. County may call or write SAS to change operating system(s), Authorized Hardware or number of workstations. These changes may result in additional license fees. Any additional fees will be effective and invoiced as of the date of such change.

4. Unless otherwise mutually agreed, SAS' then current standard license fees shall apply to subsequent renewal periods or other reasonable license fees that may be negotiated between the parties.