Memorandum

MIAMI-DADE COUNTY

Date:	July 20, 2021
To:	Honorable Chairman Jose "Pepe" Diaz and Members, Board of County Commissioners
From:	Daniella Levine Cava Mayor
Subject:	Recommendation for Approval to Award a Designated Purchase Contract: Documentum Software Licenses, Technical Support and Maintenance Services

Agenda Item No. 14(A)(12)

Recommendation

It is recommended that the Board of County Commissioners (Board) approve this request for award of a Designated Purchase in the amount of $5,049,520 under *Contract No. BW733-2/25, Documentum Software Licenses, Technical Support and Maintenance Services*, to OpenText, Inc. (OpenText) for the Information Technology Department (ITD). Approval of a designated purchase is requested, pursuant to Section 2-8.1(b)(3) of the Miami-Dade County Code, by a two-thirds vote of the Board members present, to authorize award of a contract for software licenses, technical support and maintenance services. The Documentum software was originally purchased through a competitive Request for Proposal (RFP) No. 733, Electronic Content Management, pursuant to a contract adopted by the Board on November 15, 2011, through Resolution No. R-967-11. The County is currently utilizing an existing contract on Federal GSA Schedule No. GS-35F-0598S to procure software maintenance and technical support services, professional services, and licenses.

Competition is not practicable at this time because the cost to replace Documentum is estimated to exceed $8.8 million and implementation costs are estimated to be $4 million. Procuring a new solution would be both cost prohibitive and a lengthy process, as it would entail installing and integrating a new system, re-coding interfaces to the County's existing systems as well as retraining users on the new system, interfaces, and functionality.

Further, the Documentum software has been customized to meet the evolving needs of the County. To ensure the best level of service to the County, it is recommended to establish a contract with the software developer. The Documentum software stores millions of documents for various County departments and partner agencies. Any loss of service or functionality would be disruptive to the daily operation of many County departments and partner agencies that are utilizing this software.

The County issued a competitive solicitation under RFP733 and awarded a contract to OpenText (formerly EMC Corp) on November 15, 2011 for their Documentum software. ITD used this contract to purchase software licenses, maintenance and technical services, and professional services for their Electronic Content Management (ECM) software. The software stores over 133 million documents and is utilized by Corrections and Rehabilitation, County Attorney's Office, Elections, Finance, Human Resources, Internal Services, Police, Property Appraiser, Public Housing and Community Development, Regulatory and Economic Resources, Tax Collector's Office, Transportation and Public Works, and Water and Sewer to support various operational needs.

It is in the County's best interest to award this designated purchase contract pursuant to Section 2-8.1(b)(3), of the County Code to continue purchasing products and services for the Documentum software.

Scope

The scope of this item is countywide in nature.

Delegated Authority

If this item is approved, the County Mayor or County Mayor's designee will have the authority to exercise all provisions of the contract, including any cancellation or extension provisions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Fiscal Impact/Funding Source

The fiscal impact for the five-year term is $5,049,520. The current contract, GS-35F-0598S, is valued at $955,658 for a seventeen month term and expires on October 31, 2021. The allocation under the replacement contract is higher than the current contract to account for the future purchase of additional products and services, whereas the current contract is solely for the maintenance and support of the software.

Department	Allocation	Funding Source	Contract Manager
Information Technology	$5,049,520	Internal Service Funds	Lourdes Betancourt
Total:	$5,049,520		

Track Record/Monitor

Sade Chaney of the Internal Services Department is the Procurement Contracting Manager.

Vendor Recommended for Award

Pursuant to Resolution No. R-477-18 the awarded vendor is not local and does not have a local address. Software solutions require highly specialized vendors equipped to provide the services required by the County. There are no qualified vendors for the Solution located in Miami-Dade County.

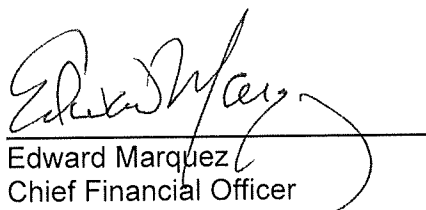| Vendor	Principal Address	Local Address*	Number of Employee Residents 1) Miami-Dade 2) Percentage*	Principal
OpenText, Inc.	2950 South Delaware Street Suite 400 San Mateo, CA	None	0 0%	Madhu Ranganathan

*Provided pursuant to Resolution No. R-1011-15. Percentage of employee residents is the percentage of vendor's employees who reside in Miami-Dade County as compared to the vendor's total workforce.

Due Diligence

Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with the Internal Services Department's Procurement Guidelines to determine contractor responsibility, including verifying corporate status and that there are no performance or compliance issues. The lists that were referenced included convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to contractor responsibility.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision applies where permitted by the funding source.
- The Small Business Enterprise measures and Local Preference do not apply.
- The Living Wage does not apply.

Edward Marquez
Chief Financial Officer

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TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: July 20, 2021

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 14(A)(12)

Please note any items checked.

_____   **"3-Day Rule" for committees applicable if raised**

_____   **6 weeks required between first reading and public hearing**

_____   **4 weeks notification to municipal officials required prior to public hearing**

_____   **Decreases revenues or increases expenditures without balancing budget**

_____   **Budget required**

_____   **Statement of fiscal impact required**

_____   **Statement of social equity required**

_____   **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

✓   **No committee review**

✓   **Applicable legislation requires more than a majority vote (i.e., 2/3's present ✓ , 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve**

✓   **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

RESOLUTION NO. _____

RESOLUTION AUTHORIZING DESIGNATED PURCHASE PURSUANT TO SECTION 2-8.1(B)(3) OF THE COUNTY CODE BY A TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT; AUTHORIZING AWARD OF CONTRACT NO. BW733-2/25 FOR PURCHASE OF DOCUMENTUM SOFTWARE LICENSES, TECHNICAL SUPPORT AND MAINTENANCE SERVICES TO OPENTEXT, INC. IN AN AMOUNT NOT TO EXCEED $5,049,520.00 FOR A FIVE-YEAR TERM FOR THE INFORMATION TECHNOLOGY DEPARTMENT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY CANCELLATION OR EXTENSION PROVISIONS, PURSUANT TO SECTION 2-8.1 OF THE COUNTY CODE AND IMPLEMENTING ORDER 3-38

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1.   This Board finds it is in the best interest of Miami-Dade County to award Contract No. BW733-2/25, in substantially the form attached and made a part hereof, for purchase of Documentum software licenses, technical support and maintenance services to OpenText, Inc. in an amount not to exceed $5,049,520.00 for a five-year term for the Information Technology Department pursuant to section 2-8.1(b)(3) of the Code of Miami-Dade County, by a two-thirds vote of the Board members present.

Section 2.   This Board authorizes the County Mayor or County Mayor's designee to exercise all provisions of the contract, including any cancellation or extension provisions, pursuant to section 2-8.1 of the County Code and Implementing Order 3-38.

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The foregoing resolution was offered by Commissioner   ,

who moved its adoption. The motion was seconded by Commissioner

and upon being put to a vote, the vote was as follows:

<div align="center">

Jose "Pepe" Diaz, Chairman
Oliver G. Gilbert, III, Vice-Chairman

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Sen. René García	Keon Hardemon
Sally A. Heyman	Danielle Cohen Higgins
Eileen Higgins	Joe A. Martinez
Kionne L. McGhee	Jean Monestime
Raquel A. Regalado	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 20th

day of July, 2021. This resolution shall become effective upon the earlier of (1) 10 days after

the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become

effective only upon an override by this Board, or (2) approval by the County Mayor of this

Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
      Deputy Clerk

Approved by County Attorney
as to form and legal sufficiency.
Oren Rosenthal

Documentum Software Licenses, Technical Support and Maintenance Services
Contract No. BW733-2/25

THIS AGREEMENT for the provision of Enterprise Content Management Software, made and entered into as of this _____ day of _____ by and between Open Text, Inc. , a corporation organized and existing under the laws of the State of California, having its principal office at 2950 South Delaware Street, Suite 400, San Mateo, CA 94403 (the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 NW 1st Street, Miami, Florida 33128 (the "County") (collectively, the "Parties").

WITNESSETH:

WHEREAS, the County has obtained Enterprise Content Management Software with Customizable Workflow Capability under Contract No. RFP733;

WHEREAS, the County wishes to obtain ongoing maintenance and technical support services, and to establish a framework for obtaining additional products and/or professional services for the Enterprise Content Management Software with Customizable Workflow Capability:

WHEREAS, the Contractor agrees to provide ongoing maintenance and technical support services, and to establish a framework for delivering additional products and/or professional services for the Enterprise Content Management Software with Customizable Workflow Capability:

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:

1.1   The words "Article" or "Articles" to mean the terms and conditions delineated in this Agreement.

1.2   The word "Claim" to mean claims, suits, actions or proceedings brought against Licensee in a court of competent jurisdiction in a Covered Country by a third party which allege an infringement of the third party's patent, copyright, or trade secret rights existing under the laws of the Covered Country.

1.3   The word "Contract" to mean collectively the (i) Articles, (ii) Agreement Templates, (iii) Order Schedule, (iv) Pricing, (v) all other appendices and attachments hereto, and (vi) all amendments issued hereto.

1.4   The words "Contract Manager" to mean the Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.

1.5   The word "Contractor" to mean Open Text Inc. and its permitted successors.

1.6   The words "Covered Countries" means each contracting party to The Patent Cooperation Treaty (currently published at http://www.wipo.int/pct/en/) and "Covered Country" means one of them.

1.7   The word "Days" to mean calendar days.

1.8   The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the Project Manager for review and approval pursuant to the terms of this Agreement.

1.9   The words "License Documents" to mean this Agreement including any addenda, the License Model Schedule, all Transaction Documents (including pricing information), Documentation, the document entitled Third Party Notifications (as applicable)

available at www.opentext.com/agreements, and any other documents provided by OT setting out permitted uses of the Software;

1.10   The words "License Fees" to mean all non-refundable fees payable by Licensee to OT with respect to the granting of Software Licenses.

1.11   The words "Licensed Software" to mean a license for the Software granted under this Agreement to the County;

1.12   The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.

1.13   The word "Software" to mean the software products, Documentation, and Support Software licensed to the County under this Agreement, including all copies made by the County and may, where the meaning so implies, refer to all of the Software or portions thereof.

1.14   The words "Software Release" to mean any subsequent version of the Software provided by the Contractor, but does not mean a new product.

1.15   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.

1.16   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. <u>AGREEMENT TEMPLATES AND SCHEDULES</u>

Additional terms for Products and Services are included in documents called "Agreement Templates" and "Schedules" provided by the Contractor. In general, the Agreement Templates contain specific details and terms related to specific products and services, while Schedules will be used to order additional licenses based on the pricing documents provided.

This Contract shall include the following attachments:

Attachment A Agreement Templates:
OpenText Professional Services Agreement
OpenText Shrinkwrap End User License Agreement
OpenText Software Maintenance Program Handbook

Attachment B: Schedules
OpenText Order Schedule

Attachment C: Pricing
OpenText List Rate Card for Miami-Dade County
OpenText License Pricing

Should there be any inconsistency between the terms and conditions of this Agreement and any Attachments to this Agreement, the terms and conditions of this Agreement shall take precedence.

ARTICLE 3. <u>NATURE OF THE AGREEMENT</u>

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

ARTICLE 4. CONTRACT TERM

The Contract shall become effective on the date of the Parties' execution, whichever is later, and shall continue through the last day of the 60th month, thereafter. The Contract may be extended for up to an additional one hundred-eighty (180) calendar days beyond the current Contract period by mutual agreement between the County and the Contractor. 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 (the "Board").

ARTICLE 5. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by: (i) Registered or Certified Mail, with return receipt requested; (ii) personally by a by courier service; (iii) Federal Express Corporation or other nationally recognized carrier to be delivered overnight; or (iv) via facsimile or e-mail (if provided below) with delivery of hard copy pursuant to (i), (ii), or (iii) in this paragraph. The addresses for such notice are as follows:

(1) **To the County**

    a) to the Project Manager:

        Miami-Dade County
        Attention: Chris Crowley
        Phone: (305) 275-7990
        E-mail: Christopher.Crowley@miamidade.gov

    and

    b) to the Contract Manager:

        Miami-Dade County
        Internal Services Department, Strategic Procurement Division
        Attention: Chief Procurement Officer
        111 NW 1st Street, Suite 1300
        Miami, FL 33128-1974
        Phone: (305) 375-4900
        E-mail: Namita.Uppal@miamidade.gov

(2) **To the Contractor**

        Open Text, Inc.
        2950 South Delaware Street, Suite 400
        San Mateo, CA 94403

        Attention: Mark Macleod
        Phone: (407) 461-3952
        E-mail: mmacleod@opentext.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 6. 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 to be performed under this Contract. 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.

ARTICLE 7. PRICING

Pricing shall be in accordance with the terms of the applicable Agreement Template, or Attachment C and 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 8. METHOD AND TIMES OF PAYMENT

The Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor pursuant to Attachment C. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust (the "Trust"), shall be made in a timely manner and that interest payments be made on late payments. All firms, including Small Business Enterprises, providing goods and services to the County, shall receive payment to maintain sufficient cash flow. In accordance with Section 218.74 of the Florida Statutes, and Section 2-8.1.4 of the Code of Miami-Dade County (the "Code"), the time at which payment shall be due from the County or Trust shall be forty-five (45) calendar days from receipt of a proper invoice. Billings from prime contractors under services and goods contracts with the County or Trust, that are Small Business Enterprise contract set-aside, bid preference or contain a subcontractor goal, shall be promptly reviewed and payment made by the County or Trust on those amounts not under dispute within fourteen (14) calendar days of receipt of such billing by the County or the Trust pursuant to Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Code. All payments due from the County or Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or Trust.

In accordance with Miami-Dade County Implementing Order No. 3-9, Accounts Receivable Adjustments, if money is owed by the Contractor to the County, whether under this Contract or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Contractor under this Contract. Such retained amount shall be applied to the amount owed by the Contractor to the County. The Contractor shall have no further claim to such retained amounts which shall be deemed full accord and satisfaction of the amount due by the County to the Contractor for the applicable payment due herein.

Invoices and associated back-up documentation shall be submitted electronically or in hard copy format by the Contractor to the County as follows:

> Miami-Dade County
> Information Technology Department
> 5680 SW 87 Avenue
> Miami, FL 33173
> Attention: Accounts Payable, Business Office

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

ARTICLE 9. INDEMNIFICATION AND LIABILTY

9.1 Indemnification. Contractor shall indemnify and hold harmless the County against any third party claim, 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. .

9.2 Limitation of Liability. EXCEPT WITH RESPECT TO CLAIMS ARISING UNDER SUBSECTION 9.4, CONTRACTOR'S TOTAL LIABILITY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF PRODUCT OR SERVICE PROVIDED HEREUNDER, SHALL BE LIMITED TO DIRECT DAMAGES CAUSED BY CONTRACTOR IN AN AMOUNT NOT TO EXCEED THE PRICE PAID BY COUNTY TO CONTRACTOR FOR THE ENTIRE CONTRACT.

9.3 <u>No Indirect Damages</u>. EXCEPT WITH RESPECT TO CLAIMS ARISING UNDER SUBSECTION 9.4, NEITHER CONTRACTOR NOR COUNTY SHALL HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

9.4 <u>Patent and Copyright Indemnification</u>. Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights or other intellectual property rights in connection with this Agreement. Contractor at its own expense shall (i) defend County against any third party claim that a Product or Service infringes a patent or copyright, enforceable in a country that is a signatory to the Berne Convention; and (ii) pay the resulting costs, and damages awarded against the County by a court of competent jurisdiction or the amounts stated in a written settlement negotiated by Contractor.

The foregoing obligations are subject to the following: County (a) notifies Contractor promptly in writing of such claim; (b) grants Contractor sole control over the defense and settlement thereof so long as the County has no exposure in the action. To the extent that the County has any exposure it may participate in its own defense at its own expense; (c) reasonably cooperates in response to Contractor's request for assistance; and (d) is not in material breach of this Agreement. Contractor expressly understands and agrees that any insurance protection required by this Agreement orotherwise provided by Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

Should any such Product or Service become, or in Contractor's opinion be likely to become, the subject of such a claim, Contractor may, at its option and expense discontinue the Service and refund the portion of any pre-paid Service fee that corresponds to the period of Service discontinuation, and:

    (i)   procure for County the right to make continued use thereof; or
    (ii) replace or modify such so that it becomes non-infringing.

Contractor shall have no liability to the extent that the alleged infringement arises out of the use of Contractor's products and services for a purpose for which they were not designed; or modifications to Contractor's products or services made by County employees or agents.

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

ARTICLE 10. <u>INSURANCE</u>

Upon County's notification, the Contractor shall furnish to the Internal Services Department, Strategic Procurement Division, certificate(s) of insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

A.   Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.

B.   Commercial General Liability Insurance, in an amount not less than $1,000,000 per occurrence $2,000,000 in the aggregate. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

C.   Technology Professional Liability in an amount not less than $2,000,000 per claim.

D.   Cyber Liability Insurance to include data breach and third-party liability, in an amount not less than $5,000,000.

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

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

<div align="center">OR</div>

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

The mailing address of Miami-Dade County as the certificate holder must appear on the certificate of insurance as follows:

Miami-Dade County
111 NW 1st Street
Suite 2340
Miami, Florida 33128-1974

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 ten (10) business days. If the certificate of insurance is received within the specified timeframe but not in the manner prescribed in this Agreement, the Contractor shall have an additional five business days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Contractor shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.

The Contractor shall assure that the certificate of insurance required in conjunction with this section remain in full force for the term of the Contract, including any renewal or extension periods that may be exercised by the County. If the certificate of insurance is scheduled to expire during the term of the Contract, the Contractor shall submit new or renewed certificate of insurance to the County before such expiration. If expired certificate of insurance is/are not replaced or renewed to cover the Contract period, the County may suspend the Contract until the new or renewed certificate is/are received by the County in the manner prescribed herein. If such suspension exceeds thirty (30) calendar days, the County may, at its sole discretion, terminate the Contract for cause and the Contractor shall be responsible for all direct and indirect costs associated with such termination.

ARTICLE 11. MANNER OF PERFORMANCE

11.1   The Contractor shall provide the Work described herein in a competent and professional manner consistent with industry standards. The County shall be entitled to a satisfactory performance of all Work described herein and to full and prompt cooperation by the Contractor in all aspects of the Work. At the request of the County, the Contractor shall promptly remove from the Project any Contractor's employee, Subcontractor, or any other person who has demonstrated unprofessional manner while performing Work hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.

11.2   The Contractor 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 Work described herein, in a competent and professional manner.

11.3   The Contractor shall always cooperate with the County and coordinate its respective work efforts to maintain the progress most effectively and efficiently in performing the Work.

11.4   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. <u>EMPLOYEES OF THE CONTRACTOR</u>

All employees of the Contractor shall 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. <u>INDEPENDENT CONTRACTOR RELATIONSHIP</u>

The Contractor is, and shall be, in the performance of all Work 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 performed or Services provided pursuant to this Agreement shall always, 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. <u>CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT</u>

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

ARTICLE 15. <u>SEVERABILITY</u>

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 16. <u>TERMINATION AND SUSPENSION OF WORK</u>

16.1   This Agreement may be terminated for cause by the County for reasons including, but not limited to, (i) the Contractor commits an Event of Default (as defined below in Article 16) and fails to cure said Event of Default (as delineated below in Article 17), or (ii) Contractor attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement.

16.2   As it relates to professional services only as defined in Attachment A-1 Paragraph 2 that may be required during the term of the contract, this Agreement may also be terminated for convenience by the County. Termination for convenience is effective on the termination date stated in the written notice provided by the County.

16.3   If County terminates this Agreement for cause under Article 15.1 above, the County may, in its sole discretion, also 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 pay all direct or indirect costs associated with such termination or cancellation, including attorneys' fees.

16.4   The foregoing notwithstanding, if the Contractors attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement, the Contractor may be debarred from County contracting 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 Code.

16.5   In the event that the County exercises its right to terminate this Agreement, the Contractor shall, upon receipt of such notice, unless otherwise directed by the County:

   i.   stop Work on the date specified in the notice (the "Effective Termination Date");

ii.   take such action as may be necessary for the protection and preservation of the County's materials and property;

iii. cancel orders;

iv.   assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;

v.   take no action which will increase the amounts payable by the County under this Agreement; and

vi.   in the case of termination for cause only, reimburse the County a proration of the fees paid annually based on the remaining months of the term per the compensation listed in Attachment C.

16.6   In the event that the County exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Articles herein for the:

i.   portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and

ii.   non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement, but not incorporated in the Services.

16.7   All compensation pursuant to this Article are subject to audit.

16.8   In the event the Contractor fails to cure an Event of Default timely, the County may terminate this Agreement, and the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports, and data.

ARTICLE 17. EVENT OF DEFAULT

17.1   An Event of Default is a material breach of this Agreement by the Contractor, and includes but is not limited to the following:

i.   the Contractor has not delivered Deliverables and/or Services on a timely basis;

ii.   the Contractor has refused or failed to supply enough properly skilled staff personnel;

iii. the Contractor has failed to make prompt payment to Subcontractors or suppliers for any Services
iv.   the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;

v.   the Contractor has failed to obtain the approval of the County where required by this Agreement;

vi.   the Contractor has failed to provide "adequate assurances" as required under subsection b below;

vii.   the Contractor fails to comply with Article 25.

17.2   When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Work or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with the terms of this Agreement. Until the County receives such assurances, the County may request an adjustment to the compensation received by the Contractor for portions of the Work which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed timeframe, the County may:

i.   treat such failure as a repudiation and/or material breach of this Agreement; and

ii.   resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Work or any part thereof either by itself or through others.

ARTICLE 18. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

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

ARTICLE 19. REMEDIES IN THE EVENT OF DEFAULT

Upon the Contractor's default, the County shall have the right to complete the Work with its own forces and/or with other contractors, and to recover from the Contractor for all costs and damages that the County incurred as a result of the default subject to limitations stated Article 9. If County is in default, Contractor shall have the right to payment from completed milestone. The County, as part of its right to complete Work, may take possession of and use any or all of the material, supplies, and property of every kind to which it obtains title under this Agreement. The County or Contractor may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 20. VENDOR REGISTRATION/CONFLICT OF INTEREST

20.1   Vendor Registration
        The Contractor shall be a registered vendor with the County – Internal Services Department, Strategic Procurement Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the vendor's Federal Employer Identification Number (FEIN) must be provided, via submission of Form W-9 and 147c Letter, as required by the Internal Revenue Service (IRS). If no FEIN exists, the Social Security Number of the owner must be provided as the legal entity identifier. This number becomes Contractor's "County Vendor Number." To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:

- **Identification of individual account records**
- **Payments to individual/Contractor for goods and services provided to Miami-Dade County**
- **Tax reporting purposes**
- **Provision of unique identifier in the vendor database used for searching and sorting departmental records**

The Contractor confirms its knowledge of and commitment to comply with the following:

1.	*Miami-Dade County Ownership Disclosure Affidavit* *(Section 2-8.1 of the Code of Miami-Dade County)*	7.	*Miami-Dade County Code of Business Ethics Affidavit* *(Article I, Section 2-8.1(i) of the Code of Miami-Dade County)*
2.	*Miami-Dade County Employment Disclosure Affidavit* *(Section 2.8.1(d)(2) of the Code of Miami-Dade County)*	8.	*Miami-Dade County Family Leave Affidavit* *(Article V of Chapter 11 of the Code of Miami-Dade County)*
3.	*Miami-Dade County Employment Drug-free Workplace Certification* *(Section 2-8.1.2(b) of the Code of Miami-Dade County)*	9.	*Miami-Dade County Living Wage Affidavit* *(Section 2-8.9 of the Code of Miami-Dade County)*
4.	*Miami-Dade County Disability and Nondiscrimination Affidavit* *(Section 2-8.1.5 of the Code of Miami-Dade County)*	10.	*Miami-Dade County Domestic Leave and Reporting Affidavit (Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)*
5.	*Miami-Dade County Debarment Disclosure Affidavit* *(Section 10.38 of the Code of Miami-Dade County)*	11.	*Miami-Dade County Verification of Employment Eligibility (E-Verify) Affidavit* *(Section 448.095, of the Florida State Statutes)*
6.	*Miami-Dade County Vendor Obligation to County Affidavit* *(Section 2-8.1 of the Code of Miami-Dade County)*	12.	*Miami-Dade County Pay Parity Affidavit* *(Resolution No. R-1072-17)*

13. **Miami-Dade County Suspected Workers'**
    Compensation Fraud Affidavit
    (Resolution No. R-919-18)

14. **Office of the Inspector General**
    (Section 2-1076 of the Code of Miami-Dade County)

15. **Small Business Enterprises**
    The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-

8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.

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

20.2 Conflict of Interest and Code of Ethics

Section 2-11.1(d) of the Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Code relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1(y) of the Code, the Miami-Dade County Commission on Ethics and Public Trust shall be empowered to review, interpret, render advisory opinions and letters of instruction, and enforce the Conflict of Interest and Code of Ethics Ordinance.

ARTICLE 21. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

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

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code, 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. The cost of the audit for this Contract shall be one quarter of one percent (0.25%) 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 of one percent (0.25%) 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 Board; (j) professional service agreements under $1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Implementing Order No. 3-38; (m) federal, state and local government-funded grants; and (n) interlocal agreements. **Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter of one percent (0.25%) 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 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 IPSIGs 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 22. <u>FEDERAL, STATE, AND LOCAL COMPLIANCE REQUIREMENTS</u>

As applicable, Contractor shall comply, subject to applicable professional standards, with the provisions of 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 clause provided under 41 C.F.R. Part 60-1.3 in accordance with Executive Order 11246, "Equal Employment Opportunity", as amended.

b) Miami-Dade County Small Business Enterprises Development Participation Provisions.

c) The Clean Air Act (42 U.S.C. § 7401-7671q.) and the Federal Water Pollution Contract Act (33 U.S.C. §§ 1251-1387), as amended.

d) The Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by the Department of Labor regulations (29 C.F.R. Part 5).

e) The Copeland "Anti-Kickback" Act (40 U.S.C. § 3145) as supplemented by the Department of Labor regulations (29 C.F.R. Part 2).

f) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics".

g) Section 10-38 of the Code of Miami-Dade County, "Debarment of Contractors from County Work".

h) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave".

i) Section 21-255 of the Code of Miami-Dade County, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

j) The Equal Pay Act of 1963, as amended (29 U.S.C. § 206(d)).

k) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited".

l) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 et seq.) "Discrimination".

m) Chapter 22 of the Code of Miami-Dade County (§ 22-1 et seq.) "Wage Theft".

n) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 et seq.) "Business Regulations".

o)   Any other laws prohibiting wage rate discrimination based on sex.

p)   Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

q)   Executive Order 12549 "Debarment and Suspension", which stipulates that no contract(s) are "to be awarded at any tier or to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs".

r)   The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07) and regulations issued pursuant thereto (24 C.F.R. Part 146).

Pursuant to Resolution No. R-1072-17, by entering into this Contract, the Contractor is certifying that the Contractor is in compliance with, and will continue to comply with, the provisions of items "f" through "k" above.

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

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

ARTICLE 23. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

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

ARTICLE 24. BANKRUPTCY

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

ARTICLE 25. GOVERNING LAW

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

ARTICLE 26. COUNTY USER ACCESS PROGRAM (UAP)

a) User Access Fee

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

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

b) Joint Purchase

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

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

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

c) Contractor Compliance

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

ARTICLE 27. FIRST SOURCE HIRING REFERRAL PROGRAM

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

ARTICLE 28. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The Contractor shall comply with the Public Records Laws, including by not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and

exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the Contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, ISD-VSS@MIAMIDADE.GOV, 111 NW 1st STREET, SUITE 1300, MIAMI, FLORIDA 33128.

ARTICLE 29. 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 customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

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

ARTICLE 30. VERIFICATION OF EMPLOYMENT ELIGIBILITY (E-VERIFY)

By entering into this Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095 of the Florida Statutes, titled "Verification of Employment Eligibility". This includes but is not limited to utilization of the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all newly hired employees by the Contractor effective January 1, 2021 and requiring all Subcontractors to provide an affidavit attesting that the Subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply may lead to termination of this Contract, or if a Subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination and the Contractor may be liable for any additional costs incurred by the County resulting from the termination of the Contract. If this Contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one year after the date of termination. Public and private employers must enroll in the E-Verify System (http://www.uscis.gov/e-verify) and retain the I-9 Forms for inspection.

ARTICLE 31. AVAILABILITY OF CONTRACT TO OTHER COUNTY DEPARTMENTS

Although this Contract identifies some County Departments, it is hereby agreed and understood that any County department or agency may avail itself of this contract and purchase any and all Products and/or Services specified herein from the Contractor at the price(s) specified in "Attachment C." Under these circumstances, "Attachment Templates" and "Schedules" shall be used to obtain these Products and/or Services from the Contractor.

ARTICLE 32. ADDITIONAL LICENSES, SOFTWARE, OR SERVICES

During the term of the contract, the County may purchase additional licenses, hardware, software, or services provided they are available. The County shall use the "Agreement Templates" and Schedules to order additional Products and Services at the rates prescribed in Attachment C. Notwithstanding any additional or contrary terms in the order, the applicable provisions of this Contract will govern the purchase and sale of additional licenses, hardware, software, or services.

ARTICLE 33. ARCHIVING

The County is authorized to retain a copy of the Licensed Software and each Software Release for archive purposes and use such release as a temporary back-up if the current Software Release becomes inoperable. Upon use of a Software Release, the County shall remove and make no further use of all prior Software Releases from disclosure or use by any third party. The County is authorized to retain a copy of each Software Release for County's archive purposes and use such as a temporary back-up if the current Software for the County's archive purposes and use such as a temporary back-up if the current Software Release becomes inoperable. The County shall use and deploy Software Releases strictly in accordance with terms of the original license for the Software.

ARTICLE 34. 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.
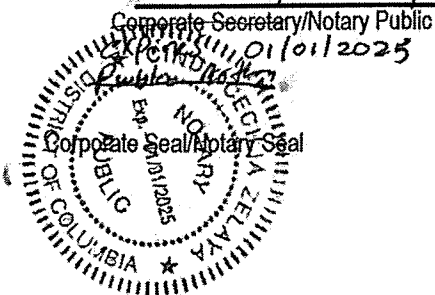
IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the last date that the Agreement is executed below,

	Contractor		Miami-Dade County
By:	*OpenText*	By:	
Name:	*Christine Vlahdis*	Name:	Daniella Levine Cava
Title:	*VP USPS*	Title:	Mayor
Date:	*5/18/21*	Date:	
Attest:	*Cindy Zeluja*	Attest:	
	Corporate Secretary/Notary Public		Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form
and legal sufficiency

Assistant County Attorney

Attachment A-1

PROFESSIONAL SERVICES AGREEMENT - USA

This Professional Services Agreement ("**Agreement**") is between Open Text Inc. ("**OT**") and Customer Legal Entity Name ("**Customer**"), and is made as of *Pick up PSA Effective Date* ("**Effective Date**").

WHEREAS, OT provides consulting, installation, implementation, configuration and other services and Customer wishes to obtain such services;

NOW THEREFORE, in consideration of the mutual promises contained herein and of other good and valuable consideration, OT and Customer agree as follows:

1. **Scope of Services.**

1.1   Professional Services. The terms of this Agreement shall govern the professional services provided by OT to Customer ("**Services**") as described in a statement of work ("**SOW**") signed by both parties and referencing this Agreement.

1.2   Order of Precedence. In the event of any conflict or inconsistency between the Agreement and an SOW, the SOW will prevail to the extent it specifically references the parties' intent to override the Agreement.

1.3   Change Orders. SOWs may be amended or modified by written change orders signed by both parties, and thereafter the Services set out in such SOW will be deemed to include the Services described in such change order.

1.4   Provision of Services. The manner and means used by OT to perform the Services are in the sole discretion and control of OT. OT may make use of subcontractors to perform any of its obligations under this Agreement, but OT will remain responsible for the performance of its subcontractors.

1.5   Customer Policies. In advance of the relevant engagement, Customer shall provide OT with copies of any applicable Customer security or other policies. OT will not perform Services unless OT agrees to comply with such policies. OT will not be liable for any delays caused by time needed to review policies, or non-performance to the extent caused by OT inability to comply with any such policies.

1.6   Fees; Schedules; Completion Dates. Dates related to performance described in an SOW are intended as an estimate only, and are not binding completion dates. Changes in scope or circumstances beyond OT's control may necessitate adjustment of previously provided fee and schedule estimates.

1.7   Licensing of OT Software. Under this Agreement, OT is not providing or licensing to Customer any OT software programs or products, except for the deliverables ("**Deliverables**") specified in an SOW. Customer may acquire licenses for other OT software products only under the terms of a separate software license agreement between the parties.

1.8   Customer Cooperation. Customer and OT shall cooperate in good faith to complete the Services in a timely and professional manner. Customer acknowledges that failure to adhere to schedules or complete tasks within Customer's control, or failure to provide timely access to facilities, equipment, technology or complete and accurate information may delay completion of the Services and OT shall not be liable for any delays or inability to complete the Services to the extent caused by Customer's non-compliance with this Section.

1.9   Affiliate SOWs. For the purposes of this Agreement, "**Affiliate(s)**" means any entity controlled by, controlling, or under common control with a party to this Agreement. Control shall exist through ownership, directly or indirectly, of a majority of the outstanding equity capital and of the outstanding shares or other securities entitled to vote generally in elections of directors or similar officials. If an entity ceases to meet these criteria, it shall cease to be an Affiliate under this Agreement. The parties agree that an Affiliate of either party may negotiate and sign an SOW which references this Agreement and is governed by this Agreement. Customer's Affiliates shall be considered the Customer for the purposes of such SOW. In the event that a Customer Affiliate breaches the provisions of such an SOW or breaches the provisions of this Agreement, the Customer shall be liable to OT as if such breach were committed directly by the Customer.

1.10   Right to Perform Services for Others. Subject to OT's compliance with the confidentiality provisions stated herein, nothing in this Agreement shall restrict or limit OT or any OT Affiliate from providing services which may be similar to the Services to any other entity in any industry.

2.   Intellectual Property Rights and Ownership.

2.1   Intellectual Property Rights. Each party will retain all ownership rights to its previously existing intellectual property (including but not limited to trademarks, copyrights, patent rights, trade secrets, confidential or proprietary information, techniques, methods, software, technology, plans, designs, and business processes). OT will retain all ownership rights to any work product created in connection with this Agreement, including software, documentation, training or educational materials, inventions, innovations and developments ("**Work Product**"), excluding any of Customer's previously existing intellectual property contained in the Work Product.

2.2   License granted to Customer. With respect to the Work Product or other OT-owned intellectual property provided under an SOW, OT grants Customer a non-exclusive license for the sole purpose of allowing Customer to make use of the Services and Work Product for its own internal business purposes in the manner contemplated in the applicable SOW. Such license is subject to Customer's payment of all fees and expenses under the related SOW.

3.   Limited Warranty.

3.1   Limited Warranty. OT warrants that the Services provided hereunder will be performed using reasonable skill and care consistent with generally accepted computer software industry practices ("**Services Warranty**").

3.2   DISCLAIMER. OTHER THAN THE EXPRESS SERVICES WARRANTY SET OUT ABOVE, OT DISCLAIMS ALL OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES RELATED TO TITLE, COMPATIBILITY WITH SOFTWARE OR HARDWARE, NON-EXISTENCE OF ERRORS, NON-EXISTENCE OF VIRUSES, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

3.3   Warranty Claims. In order to receive warranty remedies under the Services Warranty, warranty claims must be reported by Customer to OT in writing within thirty (30) days of the delivery of the related Services. Any modification of the Services not authorized by OT will cause immediate termination of the Services Warranty with respect to the modified Services.

3.4   Warranty Remedy. Customer's sole and exclusive remedy with respect to the Services Warranty will be that OT shall correct the breach of the Services Warranty within a commercially reasonable period of time. At OT's discretion, OT may elect to instead issue a refund of the fees allocable to the portion of the Services which do not satisfy the Services Warranty.

4.   Services Fees; Expenses.

4.1   Services Fees; Expenses; Applicable Taxes. Customer agrees to pay OT: (a) the Services Fees set forth in the applicable SOW ("**Services Fees**"); (b) the travel, accommodation, lodging and out-of-pocket expenses reasonably incurred by OT in the course of providing the Services ("**Expenses**"); and (c) any applicable sales, use, consumption, goods and services, and value-added taxes imposed by the appropriate governments arising out of the provision of Services, except taxes imposed on OT's income ("**Applicable Taxes**").

4.2   Time & Materials Model. Unless otherwise set forth in the applicable SOW, the Services Fees shall be calculated using a Time & Materials model. For the purposes of this Agreement, "**Time & Materials**" means that Services Fees will be calculated, invoiced and paid as follows:

4.2.1   Services Fees will be calculated by multiplying the number of hours/days worked by OT in respect of the Services by the applicable hourly/daily rate set forth in the applicable SOW, subject to any additional conditions as described in the SOW (for example, changes in rates for work on weekends or outside of normal business hours);

4.2.2   milestones and acceptance criteria in the applicable SOW shall only be used for project management purposes, and shall not affect OT's ability to invoice the Customer, and Customer's obligation to pay;

4.2.3   Customer is obligated to pay for completed Services as invoiced, regardless of whether all Services in the SOW have been completed; and

4.2.4   any reference to "total estimated services fees and expenses", "total fee", "maximum fee", "fee quote" or "quoted fee" (or other similar phrases) are a good faith estimate of the aggregate Services Fees which is provided for planning and budgeting purposes only, and shall not be interpreted to mean that all of the Services will be provided for an aggregate Services Fee equal to or less than such estimate.

4.3   Invoicing and Payment. Unless otherwise set forth in the applicable SOW, OT may invoice Customer in arrears on a monthly basis for Services Fees, Expenses incurred, and Applicable Taxes. All invoices issued under this Agreement shall be payable net thirty (30) days from the date of invoice. Overdue amounts shall accrue interest at the lesser of two percent (2.0%) per month or the maximum amount permitted by law. OT may, at its option, suspend any ongoing work until any overdue account is brought current.

4.4   Acceptance. If an SOW specifies that an acceptance test applies for a specific Deliverable, OT will notify Customer when the Deliverable is ready for acceptance. Customer will then perform a mutually agreed acceptance test ("**Acceptance Test**") within an agreed upon time period specified in the applicable SOW (the "**Acceptance Period**") to verify that the deliverable functions in accordance with the written specifications of the applicable Schedule. OT will have the right to be present during the Acceptance Test. Acceptance will occur when the Deliverable meets all material requirements of the Acceptance Test. Customer will notify OT promptly in writing of Customer's acceptance. If Customer does not conduct the Acceptance Test and notify OT within the agreed upon time period, or, if no time period is specified, within five (5) business days after delivery of the Deliverable, the Deliverable will be deemed accepted. If Customer notifies OT within the Acceptance Period that the Deliverable does not function in all material respects with the written specifications of the applicable SOW, and describes the deficiencies in sufficient detail for OT to identify or reproduce them, OT will work diligently to correct and redeliver the affected Deliverable.

5.   Term and Termination.

5.1   Term. The term of this Agreement ("Term") shall commence on the Effective Date and will continue until terminated in accordance with the terms herein.

5.2   Termination of Agreement. Either party may terminate this Agreement by providing written notice of termination to the other party, with the effective date of such termination to be the later of: (i) the date when all SOWs have been terminated, each in accordance with their respective terms and conditions; or (ii) thirty (30) days after such termination notice has been received.

5.3   SOW Term. The term of each SOW ("**SOW Term**") shall be set forth in the applicable SOW.

5.4   Termination for Convenience of an SOW. Either party may terminate an individual SOW for convenience by providing written notice to the other party indicating their intention to terminate at least thirty (30) days in advance of the termination date.

5.5   Termination for Default. Either party may terminate this Agreement for default if the other party commits a material breach of the Agreement, provided (i) the non-breaching party provides the breaching party with written notice of breach and a thirty (30) day period to cure the breach ("**Cure Period**"), and (ii) the breaching party fails to cure the breach by the end of the Cure Period. Any termination of this Agreement shall be without prejudice to each right or remedy which the non-breaching party may possess against the breaching party under this Agreement, at law, in equity, or otherwise.

5.6   Effect of Termination.

5.6.1   SOW. Upon termination of an SOW: (i) OT shall cease to perform the affected Services; (ii) OT may immediately invoice and Customer shall immediately pay all Service Fees, Expenses and Applicable Taxes owed under the terminated SOW; and (iii) Customer shall promptly return to OT all OT software.

5.6.2   Agreement. Upon termination of this Agreement: (i) OT shall cease to perform all Services; (ii) OT may immediately invoice and Customer shall immediately pay all Service Fees, Expenses and Applicable Taxes owed under the terminated SOWs; and (iii) Customer shall promptly return to OT all OT software.

5.7   Surviving Sections. The obligations of any party that have been incurred prior to the effective date of termination (including, without limitation, the obligations of Customer regarding payment of Services Fees, Expenses, and Applicable Taxes), and other provisions of this Agreement that by their nature extend beyond the expiration or termination of this Agreement (including, without limitation, the Limitation of Liability Sections of this Agreement), shall continue in full force and effect notwithstanding the expiration or termination of this Agreement and whether or not an invoice has been rendered with respect thereto.

6.   Confidentiality. By virtue of this Agreement, each party (a "**Disclosing Party**") may disclose to the other party (a "**Receiving Party**") information that is confidential and otherwise proprietary ("**Confidential Information**"). Subject to the exceptions listed below, Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential or confirmed as confidential in writing within thirty (30) days of disclosure, as well as Deliverables, Work Product and any information that, due to the circumstances under which it is disclosed, a reasonable person would infer as confidential. Confidential Information does not include any information that: (a) is or becomes a part of the public domain through no act or omission of the Receiving Party; (b) was in the Receiving Party's lawful possession prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party; (c) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; or (d) is independently developed by the Receiving Party by employees or agents without use of the Disclosing Party's Confidential Information. Each party agrees, for the term of this Agreement and for five (5) years after its termination, to hold the other party's Confidential Information in strict confidence, not to disclose such Confidential Information to third parties (other than professional advisers who are bound by appropriate obligations of confidentiality) unless authorized to do so by the Disclosing Party, and not to use such Confidential Information for any purpose except as expressly permitted hereunder. Each party agrees to take reasonable steps to protect

the other party's Confidential Information to prevent such Confidential Information from being disclosed, distributed or used in violation of the provisions of this Agreement. The foregoing prohibition on disclosure of Confidential Information shall not apply to the extent Confidential Information is required to be disclosed by the Receiving Party as a matter of law or by order of a court or by a regulatory body, provided that the Receiving Party (unless legally prohibited) promptly notifies the Disclosing Party so that it may seek an appropriate protective order. OT does not intend to have access to personally identifiable information ("**PII**") of Customer in providing services. To the extent OT has access to Customer PII stored on a system or device of Customer, such access will likely be incidental and Customer will remain the data controller of Customer PII at all times. OT will use any PII to which it has access strictly for purposes of delivering the services ordered.

7.   Limitation of Liability; Infringement Indemnity.

7.1   DISCLAIMER OF DAMAGES / LOSSES. IN NO EVENT SHALL OT BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING IN NEGLIGENCE) FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, NOR FOR LOSS OF PROFITS, LOSS OF REVENUE, INTERRUPTION OF BUSINESS, LOST OR DAMAGED DATA, OR COSTS OF REPROCUREMENT OF SUBSTITUTE SERVICES, EVEN IF OT HAS BEEN ADVISED OF THE POSSIBILITY OF THE FOREGOING.

7.2   LIMITATION OF LIABILITY. IN NO EVENT SHALL OT'S LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY SOW EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER UNDER THE APPLICABLE (OR MOST CLOSELY RELATED) SOW DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE SUCH CLAIM ACCRUES, WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE.

7.3   Infringement Indemnity.

7.3.1   Indemnity. OT will defend Licensee from any claims, suits, actions or proceedings brought against Licensee in a court of competent jurisdiction in a Covered Country by a third party which allege an infringement of the third party's patent, copyright, or trade secret rights of which OT is aware existing under the laws of the United States and Canada ("Infringement Claim"), to the extent the Infringement Claim arises solely as a result of Customer's use of the Work Product in accordance with this Agreement and the applicable SOW, and provided the alleged infringement was not caused by: (a) Customer's detailed technical specifications; (b) the modification of the Work Product by any party other than OT; (c) the combination or use of the Work Product with software, hardware, firmware, data, or technology not licensed to Customer by OT or approved by OT in writing; or (d) unauthorized use of the Work Product by Customer. "Covered Country" means each contracting party to The Patent Cooperation Treaty (currently published at http://www.wipo.int/pct/en/).

7.3.2   Exclusions. OT's obligations in the this Section are conditioned upon: (a) Customer notifying OT in writing within ten (10) days of Customer becoming aware of an Infringement Claim; (b) Customer not making any admission against OT's interests unless made pursuant to a judicial request or order; (c) Customer not agreeing to any settlement of any Infringement Claim without the prior written consent of OT; and (d) Customer, at the request of OT, providing all reasonable assistance to OT in connection with the defense, litigation, and settlement by OT of the Infringement Claim; and (e) OT having sole control over the selection and retainer of legal counsel, and over the litigation or the settlement of each Infringement Claim. OT will indemnify Customer from any judgment finally awarded, for which all avenues of appeal have been exhausted, or any final settlement in connection with any Infringement Claims, provided all the conditions of this Section are satisfied.

7.3.3   Customer's Continued Use. If the Work Product becomes the subject of an Infringement Claim, OT will, in its absolute discretion, either (a) obtain a license for Customer to continue using the Work Product, (b) replace or modify the Work Product without unreasonable degradation in functionality, or (c) terminate the license to the infringing portion of the Work Product and refund the portion of the fees received by OT and attributable to the infringing portion of the Work Product. OT's entire liability and Customer's sole and exclusive remedy with respect to any Infringement Claims are limited to the remedies set out in the this Section.

8.   Miscellaneous Provisions.

8.1   Non-Solicitation. Customer agrees that at any point during the term of the related SOW and for twelve (12) months thereafter, it will not, either directly or indirectly (for example, through a third party recruiter) solicit for employment or similar relationship, any employee or contractor of OT who has performed Services for Customer. The foregoing shall not apply if such individuals respond without Customer's encouragement to Customer's general recruitment activities including employment advertisements, job postings, or similar, provided they do not specifically target such individuals.

8.2   Independent Contractors. OT and Customer are independent contractors. Neither OT nor Customer shall have any authority to bind the other in any manner.

8.3   Waiver. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No waiver of any provision of this Agreement is binding on either party unless set out in a mutually signed written waiver.

8.4   Assignment. Neither this Agreement nor any SOW may be assigned or transferred by Customer, in whole or in part, whether by operation of law, change of control or in any other manner, without OT's prior written consent.

8.5   Vienna Convention. All provisions of the United Nations Convention on Contracts for The International Sale of Goods are hereby rejected by the parties and excluded from this Agreement in their entirety.

8.6   Governing Law. This Agreement shall be governed by the laws of the State of Delaware, excluding its conflicts or choice of law rules. If Customer or OT commence any litigation or proceeding against the other related to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and court costs.

8.7   Force Majeure. Except for (i) payment obligations, or (ii) any obligations relating to the protection of or restrictions applicable to the other party's Confidential Information or intellectual property, neither party shall be liable to the other or in breach of this Agreement due to any failure or delay in performance of its obligations to the extent the failure or delay arises (and only for the duration that the affected party is precluded from performing) as a result of acts of God, fire, disaster, explosion, vandalism, adverse weather conditions, labor disputes or disruptions, epidemics, wars, national emergencies, civil disturbances, shortages of materials, actions or inactions of government authorities, terrorist acts, border delays, failures or interruptions of utilities or telecommunications equipment or services, system failures or any other cause that is beyond the reasonable control of that party.

8.8   Severability. Should any provision of this Agreement be deemed contrary to applicable law or unenforceable by any court of competent jurisdiction, the provision shall be considered severed from this Agreement but all remaining provisions shall continue in full force.

8.9   Export Laws. Services may be subject to export control laws of the United States, Canada, or other applicable countries. Customer agrees to comply strictly with all applicable export regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Services.

8.10   Press Release. Customer agrees OT may use and disclose Customer's name and the nature of this Agreement and associated SOWs in OT public press releases and marketing materials.

8.11   Entire Agreement. This Agreement, together with each written schedule, SOW, change order, amendment or addendum to this Agreement signed by OT and Customer, sets forth the entire agreement between OT and Customer, and supersedes all prior related oral and written agreements and understandings between the parties with respect to the subject matter hereof. It is expressly agreed that if Customer issues a purchase order or other document in connection with this Agreement, such document will be deemed to be for Customer's internal use only and any provisions contained therein shall not amend or be used in interpreting this Agreement. This Agreement shall only be amended by a written document signed by OT and Customer stating such document is an amendment or an addendum hereto. The headings used in this Agreement are for convenience only and do not in any way limit or otherwise affect the meaning of any terms of this Agreement. In the event any provision of the Agreement is held to be invalid or unenforceable, the remaining provisions of the Agreement will remain in full force and effect.

8.12   Third Party Rights. No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person or entity who is not a party to this Agreement; provided that either party's Affiliate which enters into an SOW shall be deemed a party to the Agreement for the purposes of that SOW.

8.13   Calculation of Dates. For the purposes of this Agreement, a day shall mean a calendar day.

8.14   Notices. Communications related to the performance of Services under an SOW should be sent to the contact persons listed in the relevant SOW. All notices under this Agreement or any SOW will be given by electronic means (email or fax), by overnight courier services, or by mail to a party at its address set forth above, or such other address as it may substitute by notice to the other party, and will be effective upon receipt.

For OT:	For Customer:
OpenText	Customer Legal Entity Name
275 Frank Tompa Drive	Address
Waterloo, ON Canada N2L 0A1	Address
Attn: General Counsel	Attn: Customer Contact Person

Open Text Inc.   Customer Legal Entity Name

Signature: _____   Signature: _____

Print Name: _____   Print Name: _____

Title: _____   Title: _____

Date: _____   Date: _____

opentext™

End User License Agreement (USA)

This End User License Agreement ("**EULA**") is between the OpenText entity specified in the signature block below ("**OT**") and the licensee specified in the signature block below ("**Licensee**") and is effective on the last signature date ("**Effective Date**").

OT and Licensee agree as follows:

1.0   Definitions

"**Affiliate**" means any entity controlled by, controlling, or under common control with a party to this EULA. Control exists through ownership, directly or indirectly, of a majority of the outstanding equity capital and of the voting interests of the subject entity. If an entity ceases to meet these criteria, it will cease to be an Affiliate under this EULA;

"**Claim**" means claims, suits, actions or proceedings brought against Licensee in a court of competent jurisdiction in a Covered Country by a third party which allege an infringement of the third party's patent, copyright, or trade secret rights existing under the laws of the Covered Country;

"**Confidential Information**" means information, whether or not in physical form, all oral communications, documents and other information, disclosed by a party to the other which: (a) is by its nature or circumstances surrounding its disclosure is, or could reasonably be expected to be regarded as, confidential to the disclosing Party; (b) is marked or otherwise designated "confidential" by the disclosing Party; or (c) the disclosing Party informs the receiving Party is confidential or a trade secret;

"**Covered Countries**" means each contracting party to The Patent Cooperation Treaty (currently published at http://www.wipo.int/pct/en/) and "**Covered Country**" means one of them;

"**Documentation**" means user guides, operating manuals, and release notes in effect as of the date of delivery of the applicable Software, made generally available by OT;

"**Fees**" means Licensee Fees and/or Maintenance Fees, as applicable;

"**License Documents**" means this EULA including any addenda, the License Model Schedule, all Transaction Documents (including pricing information), Documentation, the document entitled Third Party Notifications (as applicable) available at www.opentext.com/agreements, and any other documents provided by OT setting out permitted uses of the Software;

"**License Fees**" means all non-refundable fees payable by Licensee to OT with respect to the granting of Software Licenses;

"**License Model**" means the description of the conditions, limitations and restrictions associated with the Software License which govern the use of the Software, as set out in the applicable License Model Schedule;

"**License Model Schedule**" for each individual Software License means the version of the document(s) entitled "License Model Schedule" applicable to the licensed Software posted at http://www.opentext.com/agreements in effect on the date of the applicable Transaction Document;

"**Physical Media**" means the physical media or hardware containing or enabling Software;

"**Reseller** means an authorized OT reseller;

"**Software**" means the software products, Documentation, and Support Software licensed to Licensee under this EULA, including all copies made by Licensee and may, where the meaning so implies, refer to all of the Software or portions thereof;

"**Software License**" means a license for the Software granted under this EULA to the Licensee;

"**Maintenance Fees**" means the non-refundable fees payable annually by Licensee to OT for Support Services;

"**Support Handbook**" means the then current version of the software maintenance program handbook published at www.opentext.com/agreements;

"**Support Services**" means the software maintenance and support services described in the Support Handbook;

"**Support Services Term**" means each twelve (12) month period beginning on the date the Software is delivered by OT to Licensee (which may be accomplished by making the Software available by electronic download) or the anniversary thereof.

"**Support Software**" means all maintenance and support software, updates, upgrades, patches, fixes, modifications, ported versions, or new versions of the Software provided to Licensee as part of Support Services, together with all related Documentation provided to Licensee pursuant to such program;

"**Taxes**" means the sales, use, consumption, goods and services, and value-added taxes imposed by the appropriate governments arising out of granting of licenses and delivery of Software or the delivery of Support Services, under this EULA, except taxes imposed on OT's income;

"**Third Party Software**" means software products owned and licensed directly by third parties to the Licensee;

"Transaction Document" includes: a) a written order schedule signed by both parties which references this EULA, b) a quotation issued by OT and signed by the Licensee, c) an invoice issued by OT, d) a renewal notice issued by OT or an Affiliate for Support Services, or e) any other document that references this EULA and is agreed to by OT in writing. If and to the extent of any inconsistency between two or more Transaction Documents, the priority of the Transaction Documents will be interpreted in the order listed above. All Transaction Documents are governed by this EULA.

2.0   Ownership of the Software
2.1   Ownership.   None of the Software is being sold. All ownership, intellectual property, and other rights and interests in the Software remain solely with Open Text Corporation, its Affiliates or its licensors. The source code of the Software is a trade secret of Open Text Corporation, its Affiliates or its licensors, and is their confidential information.

3.0   License Grant
3.1   Grant of License. Except as otherwise stated in the License Documents and subject to Licensee's payment of the License Fees and Taxes in full, OT grants to Licensee a non-transferable (except as provided herein), worldwide, nonexclusive, perpetual (unless stated to be a time limited term), internal business use license (unless otherwise stated in the License Model Schedule) to download, install and execute the Software identified in the applicable Transaction Document in object code only, subject to the License Models, restrictions, quantities, conditions, and limitations stated in the License Documents. OT reserves all rights not expressly granted to Licensee in a written document signed by both parties.
3.2   Applicable License Models. The License Model and any restrictions for the Software will be stated in the Transaction Document. If no License Model or restrictions are specified in the Transaction Document, the License Model (and any capacities) for which OT has been paid License Fees will apply.
3.3   Allocation of Licenses to Affiliates. Unless prohibited under the applicable License Document, the Licensee may allocate Software Licenses to its Affiliates, provided: (a) the Licensee remains responsible for the Affiliate's compliance with the License Documents; and (b) the Licensee is liable for any breach of the License Documents by an Affiliate.

4.0   Authorized Copies
4.1   Software and Documentation. Licensee may make as many copies of the Software necessary for it to use the Software as licensed. Each copy of the Software made by Licensee must contain the same copyright and other notices that appear on the original copy. Licensee will not modify the Documentation. Documentation may: (a) only be used to support Licensee's use of the Software; (b) not be republished or redistributed to any unauthorized third party; and (c) not be distributed or used to conduct training for which Licensee, or any other party, receives a fee. Licensee will not copy any system schema reference document related to the Software.

5.0   Restrictions
5.1   General Restrictions. Except as provided in the License Documents, Licensee will not and will not permit any other party to: (a) assign, transfer, give, distribute, reproduce, transmit, sell, lease, license, sublicense, publicly display or perform, redistribute or encumber the Software by any means to any party; (b) rent, loan or use the Software for service bureau or time-sharing purposes, or permit other individuals or entities to create Internet "links" to the Software or "frame" or "mirror" the Software on any other server or wireless or Internet-based device, or in any other way allow third parties to access, use, and/or exploit the Software; (c) use the Software, in whole or in part, to create a competitive offering; (d) charge a fee to any party for access to or use of the Software; (e) use the Software in a manner inconsistent with the License Documents.
5.2   Further Restrictions. Licensee will not disclose results of any benchmark or other performance, evaluation, or test run on or related to the Software. Licensee acknowledges that the Software is not fault-tolerant and not designed, manufactured, or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance and consequently will not use the Software for (a) the on-line control of aircraft, air traffic, aircraft navigation, or aircraft communications; (b) in the design, construction, operation or maintenance of any nuclear facility; (c) medical or surgical applications; or (d) any other application in which failure could cause personal injury or death. Except as expressly permitted under applicable law, Licensee will not modify, adapt, translate, reverse engineer, decompile, disassemble, decrypt, port, emulate the functionality, reverse compile, reverse assemble, or otherwise reduce or attempt to discover any source code or underlying structures, ideas, or algorithms of the Software or any confidential information or trade secret.
5.3   Derivative Works / Improvements. Licensee is prohibited from using the Software to create any change, translation, adaptation, arrangement, addition, modification, extension, upgrade, update, improvement, (including patentable improvements), new version, or other derivative work of or to the Software. Notwithstanding the foregoing, if any of the Software is provided to the Licensee in source code format (or any other format that can be modified), the Licensee may modify such portion of the Software for the sole

purpose of using the Software in accordance with this EULA and OT will solely own all modified portions and Licensee will irrevocably assign to OT in perpetuity all worldwide intellectual property and any other proprietary rights in and to any modifications of the Software.

5.4   Interfacing and Interactive Software. Licensee may not permit any software products not licensed by OT to interface or interact with the Software, unless accomplished through the use of application program interfaces provided by OT.

6.0   Ordering Software Licenses

6.1   Direct Orders. If Licensee orders Software directly from OT, the Software must be identified on a Transaction Document acceptable to OT.

6.2   Orders through an OT Reseller. Software Licenses ordered through a Reseller are governed by the license grant set out in this EULA and the License Model description set out in the License Model Schedule. The License Model will be stated in an order document between Licensee and Reseller. If Reseller does not notify Licensee of the correct License Model, then the License Model for which OT has been paid License Fees will apply.

6.3   Risk of Loss and Shipping Terms. The Software is deemed delivered on the earlier of (a) when it is made available by OT for electronic download, or (b) when OT delivers the Software on Physical Media. Title to the Physical Media and all risk of loss for the Physical Media will pass to Licensee when delivered by OT to the shipping dock of the OT shipping facility.

6.4   Invoicing and Payment. OT may invoice Licensee for Fees and Taxes upon delivery of Software and annually in advance for the applicable Support Services Term. All Fees and Taxes due to OT by Licensee are due and payable upon Licensee's receipt of an invoice from OT. Fees do not include Taxes which are the responsibility of Licensee. If OT is obligated to pay Taxes on behalf of Licensee, Licensee will reimburse OT in full promptly following receipt of OT's invoice. All Fees and Taxes due to OT under this EULA are payable in the currency specified in the Transaction Document. All Fees and Taxes due to OT which are not paid in full within 30 days following its due date will bear interest at a rate of 1.5% per month (18% per annum) or the maximum amount allowed by law, if less, on the unpaid portion until fully paid. This subsection does not apply if Software is purchased through an OT Reseller.

6.5   Over Usage. OT may invoice Licensee for Fees and Taxes payable by Licensee due to use of or authorization to access the Software in excess of the number or type of Software Licenses granted by OT.

6.6   Licensee Affiliate Orders. Licensee's Affiliates that order Software Licenses are bound by the terms and conditions of this EULA as if it were the Licensee. Licensee and its Affiliates are jointly and severally liable to OT for any breach of this EULA.

6.7   OT Affiliate Orders. OT Affiliates may fulfill orders pursuant to a Transaction Document in which case the OT Affiliate is bound by all of the terms and conditions of this EULA as if it were OT.

7.0   OT Support and Maintenance.

7.1   OT Support and Maintenance Program. All Support Software and Support Services provided to Licensee are governed by this EULA and the then-current version of the applicable Support Handbook.

7.2   Support Services Exclusions. OT shall have no responsibility to provide Support Services to Licensee with respect to any problem with the Software caused by: (a) any software, device, or other product not supplied by OT; (b) neglect, misuse, alteration, or modification, to the Software other than by OT; (c) use of the Software for a purpose other than the purpose for which it was designed; (d) use of the Software on a computer platform other than the platform authorized by OT (which may be specified in the Documentation accompanying the Software); or (e) failure of Licensee to install any Support Software provided by OT.

8.0   Audits and Noncompliance.

8.1   Audit. During the term of this EULA and for 24 months after, Licensee will maintain electronic and other records sufficient for OT to confirm that Licensee has complied with this EULA. Licensee will promptly and accurately complete and return (within 30 days of OT request) any self-audit questionnaires, along with a certification by an authorized representative of Licensee confirming that Licensee's responses to the questionnaire accurately and fully reflect Licensee's usage of the Software. Furthermore, OT may once per year audit Licensee's records and computer systems (including servers, databases, and all other applicable software and hardware) to ensure Licensee has complied with this EULA. Licensee shall cooperate with OT's audit team and promptly and accurately respond to, database queries, location information, system reports, and other reports requested by OT and provide a certification by an authorized representative of Licensee confirming that information provided by Licensee accurately reflects Licensee's usage of the Software

8.2   Conduct. Audits will be conducted during regular business hours and will not interfere unreasonably with Licensee's business. OT will provide Licensee prior notice of each audit. Such audit shall be scheduled as soon as reasonably possible but in no event more than 7 days subsequent to the notice. Licensee will allow OT to make copies of relevant Licensee records. OT will comply with all applicable data protection regulations.

8.3   Noncompliance. If Licensee is not in compliance with the Software Licenses, Licensee will be deemed to have acquired additional Software Licenses at OT's then-current list price to bring Licensee into compliance, and Licensee must immediately pay (a) the applicable License Fees and Taxes, and (b) Maintenance Fees for: (i) the period Licensee was not in compliance with the Software

License; and (ii) the first year Maintenance Fees on any additional Software Licenses. If Licensee has failed to comply with the License Documents, Licensee will reimburse all reasonable costs incurred by OT in performing the audit. Compliance with the License Documents is the sole responsibility of Licensee.

9.0   Limited Warranties

9.1   Limited Warranty. OT warrants to Licensee that: (a) Software will be free of all known viruses at the time of first delivery; and (b) Software will perform substantially in accordance with its accompanying Documentation for 60 days from the date of first delivery; and (c) Support Services will be delivered with reasonable skill and care. OT's entire liability, and Licensee's sole remedy, for each breach by OT of the warranty in: (i) clause (a) is limited to requiring OT to deliver a replacement copy of the Software to Licensee free of known viruses; and (ii) clause (b) is limited to requiring OT to correct or work around the portion of the Software giving rise to such breach within a commercially reasonable time, failing which, in the case of the initially-delivered Software, OT will refund all License Fees attributable to the portion of the Software giving rise to the breach; and (iii) clause (c) is for OT to re-perform the applicable Support Services.

9.2   Warranty Exclusions. The warranties do not apply to any breach caused by: (a) any change to the Software, except where the changes were made by OT through Support Software; (b) Licensee's failure to provide a suitable installation or operating environment for the Software; (c) use of the Software on or caused by software, firmware, computer systems, data, technology or a hardware platform not approved by OT in writing; (d) any telecommunications medium used by Licensee; (e) failure of Licensee or user to comply with the Documentation; or (f) failure of Licensee to report a warranty claim within the warranty period. OT does not warrant that the Software is error-free or will operate without interruption.

9.3.   WARRANTY DISCLAIMER. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THIS SECTION, OT AND OT'S LICENSORS MAKE NO REPRESENTATIONS AND DISCLAIM ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES AND CONDITIONS, WRITTEN OR ORAL, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THE ADEQUACY OF THE SOFTWARE TO PRODUCE A PARTICULAR RESULT.

9.4   Inability to Exclude Warranties. If a jurisdiction applicable to this EULA restricts the exclusion of certain implied warranties, limitations on how long an implied warranty may last, or the exclusion or limitation of incidental, consequential, or special damages: (a) each warranty which cannot be excluded is limited in time to 60 days from the date of first delivery of the Software; and (b) OT's total liability to Licensee for breach of all such warranties are limited to the amount stated in the Limitation of Liability section.

10.0   OT Infringement Indemnity

10.1   Infringement Claims. OT will defend Licensee from any Claim, to the extent the Claim arises solely as a result of Licensee's use of the Software in accordance with the License Documents. This defense will not apply to a Claim to the extent caused by: (a) Licensee's failure to incorporate a Software update or upgrade that would have avoided the alleged infringement; (b) the modification of the Software by any party other than OT; (c) the combination or use of the Software with software, hardware, firmware, data, or technology not licensed to Licensee by OT or approved by OT in writing; or (d) unlicensed activities of the Licensee. As to any such cause, OT assumes no liability for infringement and Licensee will hold OT harmless against any infringement claims arising therefrom.

10.2   Exclusions. OT's obligations in this section are conditioned upon: (a) Licensee notifying OT in writing within 10 days of Licensee becoming aware of a Claim; (b) Licensee not making an admission against OT's interests unless made pursuant to a judicial request or order; (c) Licensee not agreeing to any settlement of any Claim without the prior written consent of OT; and (d) Licensee, at the request of OT, providing all reasonable assistance to OT in connection with the defense, litigation, and settlement by OT of the Claim. OT will indemnify Licensee from any judgment finally awarded or any final settlement in connection with any Claims, provided all the conditions of this section are satisfied.

10.3   Licensee's Continued Use. If the Software becomes the subject of a Claim, OT will, in its absolute discretion, either (a) obtain a license for Licensee to continue using the Software, (b) replace or modify the Software without unreasonable degradation in functionality or (c) terminate the Software License to the infringing portion of the Software and refund the unamortized portion of the License Fees received by OT and attributable to the infringing portion of the Software, based on a 3 year straight line amortization. OT's entire liability and Licensee's sole and exclusive remedy with respect to any Claims are limited to the remedies set out in the OT Infringement Indemnity section.

11.0   Limitation of Liability

11.1   EXCLUSION OF DAMAGES. NOTWITHSTANDING ANY BREACH BY OT (INCLUDING FUNDAMENTAL BREACH) OR TERMINATION OF THIS EULA, OT IS NOT LIABLE TO LICENSEE OR TO ANY OTHER PARTY FOR: (A) ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, AGGRAVATED, EXEMPLARY, OR PUNITIVE DAMAGES; OR (B) ANY LOST SALES, LOST REVENUE, LOST PROFITS, LOST OR CORRUPTED DATA, OR REPROCUREMENT AMOUNT.

11.2   LIMITATION OF LIABILITY. OT'S AGGREGATE LIABILITY TO LICENSEE WILL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID TO OT BY THE COUNTY UNDER THE RELEVANT TRANSACTION DOCUMENT. THE PARTIES WOULD NOT HAVE ENTERED INTO THIS EULA WITHOUT THIS SECTION.
11.3   DISCLAIMER. THE LIMITATIONS IN THIS SECTION APPLY: (A) TO LIABILITY FOR NEGLIGENCE; (B) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, EQUITY, AT LAW, STRICT PRODUCT LIABILITY, OR OTHERWISE; (C) EVEN IF OT IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (D) EVEN IF LICENSEE'S REMEDIES FAIL IN THEIR ESSENTIAL PURPOSE. IF THE APPLICATION OF THIS SECTION IS LIMITED BY LAW, OT'S LIABILITY WILL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

12.0   Termination
12.1   Termination for Default. Either party may terminate this EULA if the other party: (a) becomes insolvent; or (b) has a receiver or receiver manager appointed with respect to it or any of its assets. Without prejudice to each right or remedy of a non-breaching party, either party may terminate this EULA for material breach by written notice, effective 10 days after notice unless the other party first cures the breach.
12.2   Effect of Termination or Expiration. Upon any termination of this EULA, or license granted pursuant to this EULA, or upon expiration of a term license: (a) all Software Licenses will immediately terminate; (b) Licensee will immediately cease all use of the Software; and (c) Licensee must either deliver to OT or destroy all copies of Software, Documentation, and OT confidential information in Licensee's possession or control in accordance with Florida law. Within 15 days after termination, an authorized representative of Licensee must certify in writing that all copies have been delivered to OT or destroyed. Any terms in this EULA which by their nature extend beyond termination or expiration of this EULA will remain in effect until fulfilled.
12.3   Termination or suspension of Support Services. Without limiting OT's rights under clause 12.1, OT may, in its sole discretion, terminate or suspend Support Services if Licensee fails to remedy a material breach within thirty (30) days of notice by OT, including failure to pay an invoice.

13.0   Miscellaneous
13.1   Confidentiality. Each party (a "**Disclosing Party**") may disclose to the other party (a "**Receiving Party**") any Confidential Information. Each party agrees, for the period of this EULA and for three (3) years after such period, to hold the other party's Confidential Information in strict confidence, not to disclose such Confidential Information to third parties (other than to Affiliates and to professional advisers who are bound by appropriate obligations of confidentiality) unless authorized to do so by the Disclosing Party, and not to use such Confidential Information for any purpose except as expressly permitted hereunder. Each party agrees to take reasonable steps to protect the other party's Confidential Information to ensure that such Confidential Information is not disclosed, distributed or used in violation of the provisions of this section. The foregoing prohibition on disclosure of Confidential Information shall not apply to any information that: (a) is or becomes a part of the public domain through no act or omission of the Receiving Party; (b) was in the Receiving Party's lawful possession without confidentiality obligation prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party; or (c) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; or (d) is independently developed by the Receiving Party by employees or agents without access to the Disclosing Party's Confidential Information (e) is required to be disclosed by the Receiving Party as a matter of law or by order of a court or by a regulatory body, provided that the Receiving Party promptly notifies the Disclosing Party (where lawfully permitted to do so) so that Disclosing Party may intervene to contest such disclosure requirement and/or seek an appropriate protective order or waive compliance with this section.
13.2   Automated Verification. The Software may contain or require a license key to prevent unauthorized installation or to enforce limits of the Software License, and may contain devices or functionality to monitor Licensee's compliance with this EULA.
13.3   Developer Tools. OT is not responsible or liable for Licensee's development or use of additional software code or software products ("**Licensee Software**") using software developer tools licensed by OT and Licensee will defend and indemnify OT against any claims, damages, costs, losses or expenses related to the development or use of the Licensee Software.
13.4   Independent Contractors. OT and Licensee are independent contractors. Neither party has any authority to bind the other in any manner.
13.5   Waiver, Amendment, Assignment. Any amendment of this EULA must be in writing and signed by both parties. Licensee may not assign, transfer, or sublicense any portion of its interests, rights, or obligations under this EULA by written agreement, merger, consolidation, change of control, operation of law, or otherwise, without the prior written consent of OT. Neither party will be deemed to have waived any of its rights under this EULA by lapse of time or by any statement or representation other than by a written waiver by a duly authorized representative. No waiver of a breach of this EULA will constitute a waiver of any prior or subsequent breach of this EULA. An assignment in contravention of this subsection will be null and void. Except to the extent identified in this subsection, this EULA will be binding upon and inure to the benefit of the respective successors and assigns of the parties.
13.6   Governing Law. This EULA is governed by the laws of the State of Delaware, excluding (a) its conflicts or choice of law rules, and (b) the United Nations Convention on Contracts for the International Sale of Goods. Except for a request by OT for injunctive or other

equitable relief, any dispute arising out of this EULA will be subject to the exclusive jurisdiction of the courts located in the State of Delaware. The prevailing party in any litigation related to this EULA will be entitled to its reasonable attorneys' fees and court costs.

13.7   Force Majeure. Except for payment and confidentiality obligations, or protection of intellectual property, neither party is responsible for any delay or failure in performance of this EULA to the extent due to causes beyond its reasonable control.

13.8   Severability. If any provision of this EULA is deemed contrary to applicable law or unenforceable by a court of competent jurisdiction, the provision will be severed from this EULA and all remaining provisions will continue in full force.

13.9   Export Laws. The Software, including Documentation, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Licensee will comply strictly with all regulations and has the responsibility to obtain any licenses required to export, re-export, or import Software or Documentation.

13.10   Press Release. With Licensee's prior approval, OT may refer to Licensee's relationship with OT in a public press release or marketing materials.

13.11   Attribution Notices. Licensee will not remove, modify, obscure, resize, or relocate any ownership, attribution, or branding notices from the Software.

13.12   Resale of Third Party Software. The use of any Third Party Software resold by OT to the Licensee will be governed by a license agreement between the Third Party Software owner and the Licensee. OT does not provide any warranties related to the Third Party Software. OT has no liability or obligation to the Licensee related to the Third Party Software.

13.13   US Government End Users-Restricted Rights Legend. If the Software is being licensed directly or indirectly on behalf of the United States government, the following applies. For civilian agencies and departments: the Software was developed at private expense and is "restricted computer software" submitted with restricted rights in accordance with subparagraphs (a) through (d) of the Commercial Computer Software-Restricted Rights clause of FAR 52.227-19 and its successors, and it is unpublished and all rights are reserved under the copyright laws of the United States. For units of the Department of Defense, the Software is "commercial computer software" and "commercial computer software documentation" under the Rights in Computer Software and Computer Software Documentation clause of DFAR 227.7202-3 (a) and its successors, and all use, duplication or disclosure is subject to the license and restrictions set forth in this EULA.

13.14   Entire License Agreement. The License Documents set forth the entire agreement between the parties with respect to this subject matter, and supersede all other related oral and written agreements and communications between the parties. Neither party has relied upon such other agreements or communications. Any purchase order terms which purport to amend or modify terms of the License Documents, or which conflict with the License Documents are void and shall have no legal effect notwithstanding the fact the purchase order terms being later in time or OT issuing an invoice to Licensee after receiving such purchase order from Licensee.

13.15   Transaction Documents and Order of Priority. OT and Licensee may agree in a Transaction Document to special provisions which amend or vary a party's rights or obligations under this EULA (including any addenda), the License Model Schedule, Documentation, the document entitled Third Party Notifications available at www.opentext.com/agreements or any other documents provided by OT setting out permitted uses of the Software. In the event of an inconsistency between: (i) special provisions agreed in a Transaction Document, (ii) this EULA (including any addenda), (iii) the License Model Schedule, Documentation, the document entitled Third Party Notifications available at www.opentext.com/agreements or any other documents provided by OT setting out permitted uses of the Software, the documents shall be interpreted in that order to the extent of the inconsistency.

13.16   Third Party Rights. This EULA does not confer a benefit on, and is not enforceable by, any person or entity who is not a party to this EULA.
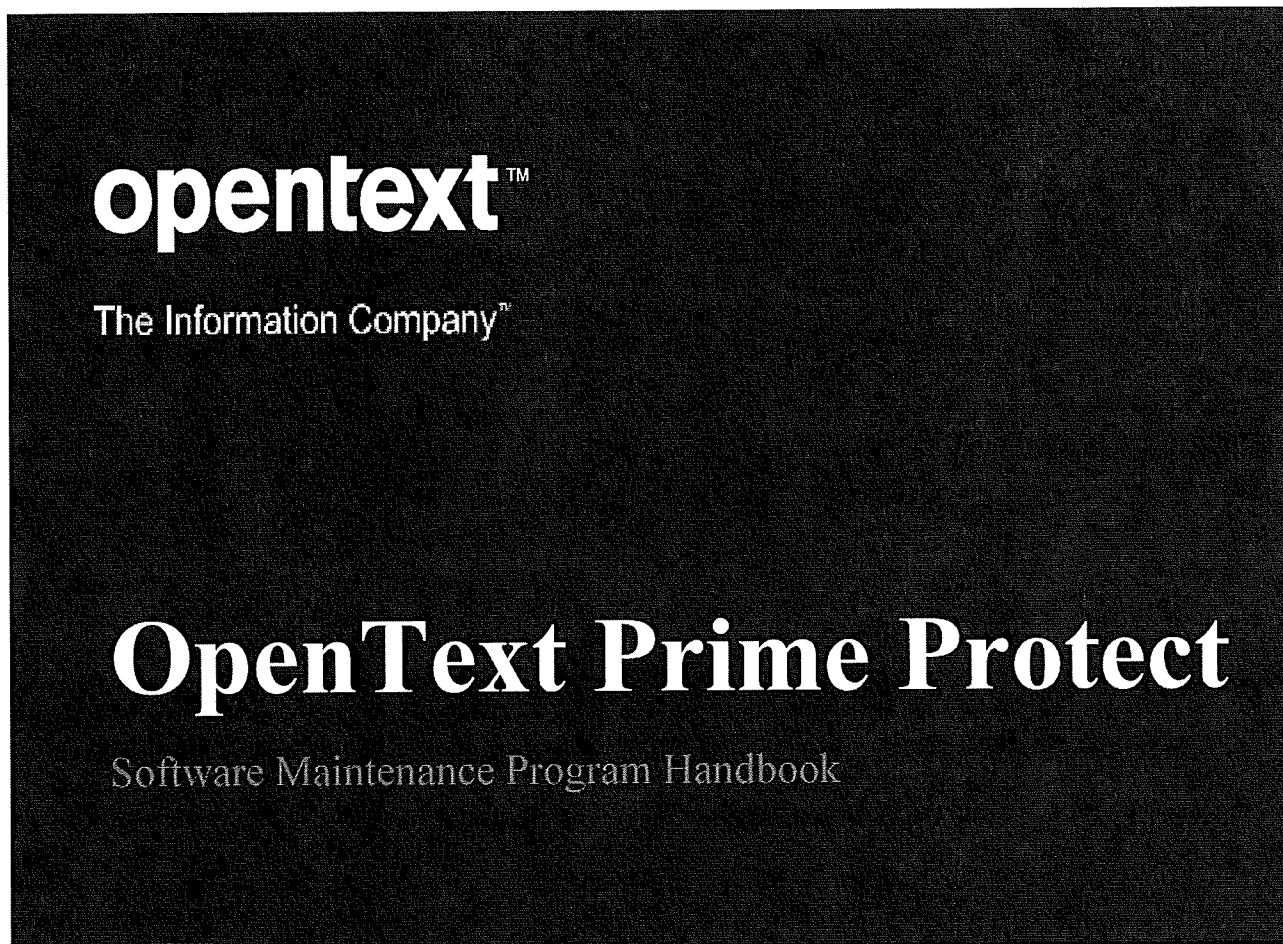
13.17   Legal Review and Interpretation. Both parties have had an opportunity for legal review of the License Documents. The parties agree that the License Documents result from negotiation between the parties. The License Documents will not be construed in favor of or against either party by reason of authorship. The headings used in this EULA are for convenience only. The term section refers to all subsections below a section heading (i.e. 3.0) and the term subsection refers to sequentially numbered subsections following a section (i.e. 3.1).

13.18   Notices. Any notice under this EULA that must be given by a party in writing is deemed effective when sent either: (a) via certified or registered mail, postage prepaid, or (b) via express mail or nationally recognized courier service to the other party's address specified in this EULA or on the most recent Transaction Document. Notices to OT will also be sent to OT's general counsel at 2950 South Delaware Street, San Mateo, California 94403 USA.

13.19   Hardware. IF HARDWARE IS IDENTIFIED ON A TRANSACTION DOCUMENT, THE SALE AND USE OF THE HARDWARE WILL BE GOVERNED BY TERMS OTHER THAN THIS EULA. OT DISCLAIMS ALL WARRANTIES AND LIABILITY WITH RESPECT TO THE HARDWARE.

Open Text Inc.	Licensee: _____
Name:	Name:
Title:	Title:
Date:	Date:
Address:	Address:

opentext™

The Information Company™

OpenText Prime Protect

Software Maintenance Program Handbook

1. Introduction

Welcome to Open Text Corporation's OpenText (OT) Prime Protect Software Maintenance Program. This handbook provides you with information about the policies and processes designed with your support needs in mind. Please use this as a guide to help you get the most out of your investment in OT solutions.

The OT Prime Protect Software Maintenance Program Handbook (the "Handbook") describes the OT Prime Protect Software Maintenance Program services offered for OT software licensed from OT and for which you have purchased the support services described herein. We also offer fee-based enhanced support programs that allow organizations to extend their support coverage depending on their business needs, and are available to any current subscriber of the OT Prime Protect Software Maintenance Program and may be described in section 5 of the Handbook.

You can also refer to http://www.opentext.com/support to find more information, or contact your local OT customer support office for documentation on these additional programs.

1.1 Definitions

"**Additional Program**" refers to fee-based enhanced programs, which may be outlined in Section 5 herein.

"**Classification**", "**Classified**" or "**Classify**" refers to the OT designated priority of the Support Request.

"**Covered Software**" shall mean the licensed software for which maintenance services shall be provided under this Handbook including all documentation provided or made available.

"**Customer Service Portal**" refers to the OT online access point for links to and information regarding OT customer support, available to OT Prime Protect customers.

"**Current Maintenance**" – a defined period of time from the release date of the Covered Software which includes:

- Unlimited number of Support Request submissions
- Product Patches and/or Releases
- The ability to request enhancements or new features and report Errors
- Access to the Customer Service Portal (Documentation, technical articles, discussion forums, webinars and events)
- Requires customer active software maintenance and annual renewal

"**Days**" refers to business days, which are 5 days x 8 hours Monday through Friday, except for regional statutory holidays.

"**Documentation**" refers to user guides, operating manuals, and release notes in effect as of the date of delivery of the applicable Covered Software, made generally available to OT's end users by OT.

"**Error**" refers to any verifiable and reproducible failure of the Covered Software to perform substantially in accordance with its accompanying Documentation, as applicable, for such Covered Software.

"**Expiration**" shall mean the ending of a Term whether occurring through termination or cancellation "**Initial Term**" refers to the twelve

months beginning on the Start Date.

"**OT**" refers to Open Text Corporation and/or its subsidiaries/affiliates offering the maintenance and support services as described in this OT Prime Protect Software Maintenance Program Handbook, as applicable.

"**Product Patch**" refers to an additional software program to correct an Error of the Covered Software.

"**Points of Contact**" or "**POC**" refers to one or more of your designated employees who are authorized to contact the OT support team.

"**Production Mode**" refers to the use of the Covered Software as intended by its accompanying Documentation, by your users as part of business or service operations. Production Mode does not include development, quality assurance, demonstration, testing, staging or training environments.

"**Release**" refers to the finalized and released software.

"Resolution" refers to taking the necessary action to correct an Error such that the Covered Software is operating in accordance with the Documentation. This could include, but is not limited to, creating a new or applying an existing Workaround (provided that OT will pursue a permanent fix, if commercially reasonable), or Update.

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"**Response Time**" refers to the amount of time that is measured from the time a Support Request is received by OT until the time when a technically qualified member of OT responds to you for the purpose of commencing the work necessary to achieve Resolution of the Support Request. The response time for an SR is determined by its Classification, the OT support program(s) the customer subscribes to, and the time when the SR was submitted to OT during a business day.

"**Start Date**" refers to the initial date for the commencement of customer's OT Prime Protect Software Maintenance Program which is on the date the Covered Software is initially shipped or otherwise made available from OT to you.

"**Subsequent Term**" refers to the 12-month term commencing on the first anniversary of the Start Date and each subsequent 12-month term commencing on an anniversary of the Start Date.

"**Support Request**" or "**SR**" refers to the initiation of a record or "ticket" documenting the details of the service request or incident.

"**Support Services**" refers to the following activities: an initiation of a Support Request, OT's response to the Support Request, and a Resolution of the Support Request.

"**Sustaining Maintenance**" refers to the stage of the product lifecycle following the expiration of Current Maintenance. During this phase of the product support lifecycle, the following Support Services may be available*:

- Unlimited number of Support Request submissions OT will use commercially reasonable endeavors to respond to and provide a Resolution of an SR

- Access to the Customer Service Portal (Documentation, technical articles, discussion forums, webinars and events)

*The terms and length of phases of the product support lifecycle may vary depending on the product and Release. Please refer to the Customer Service Portal product page for specific lifecycle terms.

"**Term**" refers to either the Initial Term or a Subsequent Term.

"**Update**" shall mean any Product Patch or Release of the Covered Software, which will be provided by OT to the customer in accordance with this Handbook.

"**we**" or "**our**" refers to OT.

"**Workaround**" is a manner of addressing an Error by bypassing the problem in the system (software

technical bypass). A Workaround is typically a temporary fix and OT may subsequently correct the Error in the Covered Software and / or the programs through an Update.

"**you**", "**your**" or "**customer**" mean the entity that licensed the Covered Software from OT and is purchasing OT Prime Protect Software Maintenance Program services.

2. Support Services

2.1 General

2.1.1 Hours and OT Support Services Location Information
Support Services are available 7x24 for critical and serious support requests (as defined in section 2.3.2 of this SMPH). For normal Support Requests, Support Services are available 5x8 *Monday through Friday, except for regional statutory holidays. Support Services hours are based on the country where the Covered Software is installed. Hours, support locations and additional contact information for the OT Prime Protect Software Maintenance Program are publicly available and maintained at our corporate website at http://www.opentext.com/support/contact/opentext.

Support Services are delivered from a support location in the same region as the Covered Software is installed or from an alternate support location as determined by OT. Where an alternative support location is used by OT, regional statutory holidays for such alternative support location shall not impact the Support Services hours for customer.

Communication relating to an SR will be made in English, unless, at OT's discretion, the support center responsible for processing is able to offer communication in another language as a convenience to the customer. OT may not be able to provide any information in a language other than English in the event an SR is transferred to a different support center.

*For customers in the Middle East, Support Services are available 8 hours a day, 5 days a week, Sunday through Thursday, except for regional statutory holidays, for normal Support Requests.

1.1.1 Point(s) of Contact

Support Services are provided to your Point of Contact (POC). The POCs must have knowledge of, and the administrator permissions for, the Covered Software sufficient to provide OT customer support with the information and undertake actions required to achieve a resolution of the SR as described below.

POCs are generally the administrators and other members of your technical staff.

A unique support renewal contract for the Covered Software will be assigned to each software maintenance and support order you place with OT. You may designate up to six POCs for each support renewal contract. The POCs may only contact OT customer support in accordance with section 2.1.1.

1.1.2 Software Updates

Releases to Covered Software will be made available to you as part of the OT Prime Protect Software Maintenance Program at no additional charge if and when such Releases are generally released to all OT Prime Protect Software Maintenance Program subscribers. To receive such Releases, the OT Prime Protect Software Maintenance Program must be subscribed to at time of Release and request. Subscribers are notified about new Releases in regular information bulletins and via the Customer Service Portal.

You are encouraged to run the most recent Release of the Covered Software. In most instances, OT will support each Release of the Covered Software for a period of sixty (60) months after the Release is generally made available to OT's customers (Current Maintenance). The terms and length of phases of the product support lifecycle may vary depending on the Covered Software and Release. Please refer to the Customer Service Portal product page for specific lifecycle terms. After the expiration of the Current Maintenance term, the Covered Software enters the Sustaining Maintenance phase of the product lifecycle. When Covered Software is considered to be in Sustaining Maintenance, no new Product Patches and Releases are released for general use.

Migration to a Current Maintenance Release may be required in order to address an issue. If you are unable to update to a subsequent Release under Current Maintenance, OT may offer extended support and maintenance options at an additional

cost. Please contact your Renewals Specialist or local OT customer support office for more information.

2.2 Initiation of a Support Request

Support Services are provided under the OT Prime Protect Software Maintenance Program to address incidents reported by subscribers associated with performance or usage issues. Performance and usage issues are situations where the Covered Software is not performing substantially in accordance with the

accompanying user Documentation. Generally speaking, performance and usage issues may be caused by: 1) software Error or defect (related to the design, coding or architecture of the Covered Software), 2) usage or configuration Error (related to usage of the Covered Software or the installation, configuration or setup of the Covered Software), or 3) environmental Error (related to the subscriber's network, hardware and operating systems).

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SRs for Support Services to address any issues should be initiated by a POC using the Customer Service Portal located at https://knowledge.opentext.com/go/Customer_Care. These customer self- service tools will automatically initiate an SR and send you an associated tracking number.

You are encouraged to:

- Provide OT customer support with the information it reasonably needs to Classify and log the SR (see 2.3.2).

- Wherever possible, use the SR number for each communication with OT customer support.

2.3 OT Response to a Support Request

2.3.1 Support Request Dispatch

Support Requests will be dispatched as follows:

a. If the SR involves OT Covered Software, then a SR will be forwarded to OT customer support for Classification and Resolution (described below).

b. If the source of the SR is unclear, the ticket will be forwarded to OT customer support for further investigation and, once the source of the SR is determined, it will be dispatched as described above in section 2.3.1 (a)

c. If the source of the SR is your hardware, operating system, database, web server, browser software or other non-OT application, OT may, where possible, attempt to provide a Workaround (described below) and/or may, where possible, report the problem to the appropriate vendor for Resolution. If the SR involves a product that is developed by a third party, the SR may be referred to that third party.

d. Any software and/or hardware provided by and installed by OT (as agreed by you) to assist with the delivery of the Support Services that is not purchased by you must be removed and returned to OT upon termination of the program or related delivery component.

2.3.2 Support Request Classification and Response Times

SR Classification	SR definition	Target Response Time
	Each SR will be Classified by OT customer support as listed below. OT will consider, in good faith, your request to reclassify an SR.	Response Times are targets and cannot be guaranteed in all circumstances by OT.
Critical	An SR will be Classified as a critical incident if the performance issue reported causes the Covered Software to be functionally inoperable (entire system is down) and prevents the Covered Software from being used in Production Mode.	1 hour or less, 7x24 Critical incidents must be logged by phone to OT directly.
Serious	An SR will be Classified as a serious incident if the performance issue reported significantly degrades the performance of the Covered Software or materially restricts your use of the Covered Software in a Production Mode (system is operational, but performance may be impacted).	2 hours, 7x24

| Normal | An SR will be Classified as a normal request if the performance issue reported is a question regarding: (i) end use; (ii) configuration of the Covered Software or a minor defect in the Covered Software that does not materially restrict your use of the Covered Software in a Production Mode; (iii) an enhancement, or (iv) related to questions on or configuration of the Covered Software.

As a rule, SRs reported via email and/or are for non-production systems are Classified as Normal.

Access to the Customer Service Portal remains available 7x24. | 4 business hours, 5x8 |

Escalation: You may request an escalation at any time through the Customer Service Portal or phone. Please see Section 3.0 for

limitations to the OT Prime Protect Software Maintenance Program

2.4 Resolution of Support Request

OT customer support shall attempt to address each SR, regardless of Classification, through the offering of technical advice, by locating an existing Workaround or by creating a new Workaround using the process described below in this Section 2.4. In the event of an outage, and depending on the cause and duration of the outage, OT may require the customer to restore from backup in order to return the system to a production state.

Once production service is restored, the SR Classification is downgraded and root cause analysis may continue, as requested, during regular regional support hours of operation.

If a Product Patch is provided to you to resolve an SR, distribution of the Product Patch will be carried out through the next scheduled Release.

2.4.1 Resolution of Critical SR's

For SR's Classified by OT as critical which have been caused by defects in the Covered Software, if the technical advice provided by OT customer support has not resolved the SR, and if no Workaround can be found or created to resolve the SR, OT customer support will use commercially reasonable efforts to develop a Product Patch to address the SR and provide it to you.

2.4.2 Resolution of Serious SR's

For SR's Classified by OT as serious, OT may develop a Product Patch or may address this in a future Release.

2.4.3 Resolution of Normal SR's

Resolution of SR's Classified as normal may be included in a future Release.

2.4.4 Conditions of a Support Request Resolution

OT customer support shall attempt to address each SR, regardless of Classification; OT will have no obligation to provide a Resolution for your SR as described above unless:

- You are running a Release of the Covered Software which is under Current Maintenance and you have installed and implemented all of the most recently available relevant Updates, or you do so at the request of OT customer support. OT customer support will make that request if it reasonably believes that the installation and implementation is necessary to achieve Resolution of your SR; AND,

- You are using the Covered Software on hardware and with third party software approved by OT or as specified

in the Documentation; AND,

- The SR has, as determined by OT, not been caused by you, including, but not limited to your use and/or configuration of: (a) development tools, including SDK; (b) a third party resource; and (c) the operating environment in which the Covered Software is implemented, including, among other things, the operating system, database, other applications, services, or programs, communication networks, or hardware; AND,

- Your POC is available to actively participate with OT on diagnosis, testing, and

  Resolution. OT reserves the right to suspend its obligations under this Handbook during any time(s) in which a competent POC is unavailable for such participation; AND,
- You have provided OT with all of the information necessary to allow OT to reproduce the SR

3. Limitations

The following limitations apply to the OT Prime Protect Software Maintenance Program:

- The OT Prime Protect Software Maintenance Program as described in this Handbook only applies to the Covered Software as is described in the OT Documentation, and does not apply to any modifications, deliverables, or services provided by OT's professional services staff or by third party resources which results in the alteration or extension of the Covered Software. Customer may engage OT's professional services for fee-based assistance under separate agreement.

- OT reserves the right to modify any portion of this Handbook at its sole discretion and without prior notice; however, you will be notified of any such modifications (if such modifications result in a material reduction of service) in a timely manner by way of email, written notice or a posting on the Customer Service Portal.

- Nothing in this Handbook purports to exclude, restrict or modify, any condition, warranty or guarantee implied by applicable law ("Implied Terms") where to do so would have the effect of rendering all or any part of this Handbook void or otherwise unenforceable. To the maximum extent permitted by applicable law, OT's liability for breach of any Implied Terms is limited to the resupply of the OT Prime Protect Software Maintenance services.

- OT's obligation to address SR's and/or performance issues shall be strictly limited to those obligations described in this Handbook.

- The OT Prime Protect Software Maintenance Program does not provide for dedicated assistance with issues encountered as a result of implementing major changes to the technical architecture of the Covered Software (for example, Updates to the application, underlying database, addition of new hardware, etc.). OT offers: (1) remote or onsite assistance from an OT Customer Support representative who is assigned to your organization for the duration of a maintenance activity or SR to observe, participate in conference calls or web sessions, or provide assistance with your maintenance activities ("Dedicated Support"); and (2) an assigned support representative with expertise in your planned maintenance activity that will be on call only in the event you need assistance ("Standby Support"). Dedicated Support or Standby Support are fee-based services that must be pre-arranged for these types of activities. Please contact your local OT customer support office for more information.

- OT Prime Protect Software Development Kit (SDK) Support will provide assistance with
  SRs relating only to: (a) the installation (b) the configuration of an OT developer application (for example, Integrated Development Environment ("IDE")) or related software required to establish a suitable development or programming environment that is consistent with those environments or applications which have been supported; and (c) the analysis of error messages related to the OT developer application. SDK support for debugging code, assistance with writing coding, code reviews, or any general programming assistance is not included as part of the OT Prime Protect Software Maintenance Program, but can be provided through separate agreement at an additional charge.

- The provision of license keys is excluded from the Response Times described in Section 2.3.2 of this OT Prime Protect Software

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Maintenance Program. Additionally, license keys from third party vendors are requested of the third party vendor, and provided by the third party vendor to either OT or the Customer as determined by OT.

- The software lifecycle for third party products resold by OT is established by third party vendors only. Third party software is excluded from Section 2.1.3.

- OT is not responsible for providing Support Services for third party products resold by OT to the extent that addressing SRs is dependent on unresolved issues with third party products including, but not limited to, unavailability of third party support.

- All licenses must be supported under the same software maintenance program (e.g., Prime Protect).

4. Term and Renewal

4.1 Initial Term and Renewal

The Initial Term for OT Prime Protect Software Maintenance Program is twelve months beginning on the Start Date. Unless either party provides 90 calendar days written notice prior to the expiration of the current term, the OT Prime Protect Software Maintenance Program will automatically renew for a Subsequent Term on an annual basis, commencing each anniversary of the Start Date. Before the commencement of a Term, you will be obligated to pay the applicable entire annual OT Prime Protect Software Maintenance Program fee with respect to the Covered Software which you have licensed from OT, failing which OT may suspend some or all of the OT Prime Protect Software Maintenance Program services until payment has been received. Such suspension shall not relieve you from your obligation to pay the applicable OT Prime Protect Software Maintenance Program fee. OT may increase the annual fee for Subsequent Terms of software maintenance by no more than 10% of the price of the previous Term. All fees paid for the OT Prime Protect Software Maintenance Program are non-refundable.

4.2 Reductions

All requests to renew OT Prime Protect Software Maintenance Program on a fewer number of licenses or modules for Covered Software than is currently covered under maintenance and support must be submitted in writing to OT no less than 90 calendar days prior to the expiration of the then-current Term. Acceptance of any requests to align fees for the remaining software is at OT's sole discretion. If OT accepts such a request, OT shall only provide Updates and software support for the number and type of licenses included in your then remaining Covered Software being renewed under maintenance and support. The maintenance charges for the remaining Covered Software shall be re-priced. In such an event, the fees applied to each license may differ from any earlier Terms (for example, previously granted fee discounts are not applicable).

4.3 Lapse and Reinstatement
If you terminate or cancel, as applicable, a Term of the OT Prime Protect Software Maintenance Program for the Covered Software, you may, upon agreement by OT, subsequently purchase OT Prime Protect Software Maintenance Program services for said Covered Software for a fee to be determined by OT at time of request. However, in addition to the fee for the new Term, which shall be a minimum of 12 months, you will need to pay the fees that would have been payable had you continued the OT Prime Protect Software Maintenance Program uninterrupted. The fees charged to re-instate the OT Prime Protect Software Maintenance Program are subject to a surcharge for each lapsed month, including the month of reinstatement.

Future reinstatement of software removed as a part of a reduction as described in Section 4.2 is subject to payment of back-maintenance fees and lapsed month surcharges.

OT will confirm fees for reinstatement at the time the request is made for reinstatement.

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4.4 Expiration

Upon Expiration of the Term of an OT Software Maintenance Program, you acknowledge and agree that any and all agreements between you and Open Text related to the OT Software Maintenance Program shall automatically terminate, irrespective of whether these agreements were documented in this Handbook or a EULA or any other document. Should you at any point in time after Expiration choose to subscribe again to an OT Software Maintenance Program, you will do so under the then-current OT Software Maintenance Program commercial and support services delivery terms, and OT shall not be obligated to comply with, any agreements that were entered into prior to the Expiration date related to such OT Software Maintenance Program.

5. Additional Programs

Additional Programs are fee-based enhanced support programs that allow organizations to extend their support coverage depending on their business needs, and are available to any current subscriber of the OT Prime Protect Software Maintenance Program.

5.1 Additional POCs

Additional POCs is a subscription-based option to extend the number of your designated employees who are authorized to contact OT customer support and open SR's. If you elect to purchase this option:

- Fees for Additional POCs are annual

- The Additional POC period shall be for 12 months unless otherwise agreed by OT and the customer in writing.

- The terms in this Handbook shall apply to the program deliverables defined herein for the Additional POCs.

5.2 Onsite Assistance

Onsite support is available as a fee-based service for OT products and solutions. This service may include, but is not limited to, Workarounds or assistance with configuration changes as part of the Resolution of an open SR.

6. Privacy

OT will comply with the requirements of data protection law applicable to it for the processing of personal data. We have implemented technical and organizational measures to protect your personal data and ensure a level of security appropriate to the risk. Customers' personal data shall not be used by OT, its affiliates or its business partners, vendors and agents working on our behalf for any other purpose other than as required under this Handbook, the underlying contract and permitted or required by law. If OT requires access to personal data to provide Support Services, Customer will provide personal data to OT only to the extent reasonably required.

Personal data may be processed in other countries. The transfer to other countries shall be in accordance with applicable data protection legislation which may include an adequacy decision by applicable regulators (including Privacy Shield certification) or appropriate safeguards. Appropriate safeguards may include OT and third parties entering into the EU standard contractual clauses for the transfer of personal data. For more information, please refer to the OT privacy policy available at https://www.opentext.com/about/copyright-information/site-privacy.

Attachment B-1

Order Schedule

This Order Schedule dated the _____ day of _____, 20__ ("**Order Effective Date**"), by and between OT and Licensee, is a schedule to the EULA between the parties signed _____. If the parties have not executed a license agreement, this Order Schedule is governed by the terms of the *Open Text End User License Agreement* found at www.opentext.com/agreements for the applicable region and all references to EULA will be to this document. All capitalized terms used in this Order Schedule have the meaning given them in the EULA unless otherwise defined in this Order Schedule.

Licensee Name:	
Licensee Business Contact and Phone:	
Licensee Shipping Contact and Phone:	
Shipping Address:	
Billing Address:	
Authorized Site Address:	
Geographic Territories:	The Software may be used in the following countries:
Customer PO Number (if applicable):	

OpenText Software Licenses	SKU	QTY	LICENSE MODEL	LICENSE FEE
See attached Miami-Dade Proposed Pricing_18Mar21 FINAL.pdf				
			Total Software License Fees:	XXX,XXX.XX
Support				
OpenText Protect Program Fee				XXXXX
Other (Hardware, Training, or Third Party Products)	SKU	QTY	LICENSE MODEL	FEE
			Total Other Fees:	XXX,XXX.XX
			Grand Total (before taxes):	XXXXX

Notes and Conditions:
First Year Maintenance Expiration Date: _____, 20___
Payment Terms: Net 30
Taxes: Not Included
Shipping Information: FOB Shipping Point

License Model Definitions: Unless otherwise provided for in the EULA, the definitions and descriptions for License Models identified in this Order Schedule are found in the version of the "License Model Schedule" located at www.opentext.com/agreements which is effective as of the Effective Date of this Order Schedule.

Support Terms: The provision of support and maintenance services by OT to the Licensee will be governed by the terms of the then-current version of the OT standard Software Maintenance Program Handbook (a copy of which is available at www.opentext.com/agreements or upon request).
Special Provisions Applicable to this Order Document:

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[Include Text (if any) in Product Specific Terms field from SalesForce Quote]
[Include any license limitations related to territory, term of license, language, purpose of use, etc.]

All other terms and conditions of the EULA shall remain in full force and effect.

OT: **Licensee:**
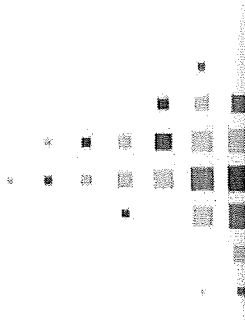
_____   _____

Name: _____   Name: _____

Title: _____   Title: _____

Date: _____   Date: _____

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Attachment C-1

OPENTEXT
LIST RATE CARD FOR
MIAMI– DADE COUNTY

High-level Overview

Miami-Dade County is considering using OpenText Professional Services. This rate card contains the list rates for OpenText services, and is provided with limited customer information or discussions, is non- binding, and is provided for high-level planning purposes only. Depending on the scope of the work, the actual rates proposed may vary.

- All rates do not include any Travel and Related Expenses unless noted.
- Use of On-site resources requires 1 week minimum.
- This Rate Card may be subject to a 2% increase 1 year from contract execution date.

OpenText Role	Indicative Responsibilities	Rate Per Hour
Project Manager	- Communicate program status, program readiness, and business issues and risks across organizations and to Sr. Management and Executives - Serve as point of contact and manages overall company customer interface relationships for defined scope of work to drive responsiveness - Provide technical and/or business consultative leadership for Program Management and Project Management functions - Maintain awareness of existing or potential escalation issues, and provide command/control and timely updates - Proactively follow the OT escalation and change control process, driving alignment with the PSPM methodology	$225.00
Solution/System Architect	Take the lead in: - process design/redesign, - solution architecture design, - infrastructure design and planning, - acceptance testing, and	$260.00

	• maintenance strategy development. Use structured techniques to lead and participate in: • application customizations and • technical implementations Engage independently with the client to provide architectural advice and oversight, and/or participate on the project team as a senior technical lead.	
Consultant	• Work under the supervision of the project manager and with technical guidance from the Architect • Engage independently with the client on requirement definition, solution feature mapping, solution design, infrastructure analysis, and acceptance testing • Take the lead in defining the details of the upgrade path and also execution of the upgrade steps	$225.00
Consultant (Off-Shore)	• Work under the supervision of the project manager and with technical guidance from the Architect • Engage independently with the client on requirement definition, solution feature mapping, solution design, infrastructure analysis, and acceptance testing • Take the lead in defining the details of the upgrade path and also execution of the upgrade steps	$65.00
Solution/System Architect (Off-Shore)	Take the lead in: • process design/redesign, • solution architecture design, • infrastructure design and planning, • acceptance testing, and • maintenance strategy development. Use structured techniques to lead and participate in: • application customizations and • technical implementations • Engage independently with the client to provide architectural advice and oversight, and/or participate on the project team as a senior technical lead.	$85.00
Project Manager **(Inclusive of Travel & Related Expenses)**	• Communicate program status, program readiness, and business issues and risks across organizations and to Sr. Management and Executives • Serve as point of contact and manages overall company customer interface relationships for defined scope of work to drive responsiveness • Provide technical and/or business consultative leadership for Program Management and Project Management functions • Maintain awareness of existing or potential escalation issues, and provide command/control and timely updates • Proactively follow the OT escalation and change control process, driving alignment with the PSPM methodology	$307.00
Solution/System Architect **(Inclusive of Travel & Related Expenses)**	Take the lead in: • process design/redesign, • solution architecture design, • infrastructure design and planning, • acceptance testing, and	$342.00

	• maintenance strategy development. Use structured techniques to lead and participate in: • application customizations and • technical implementations • Engage independently with the client to provide architectural advice and oversight, and/or participate on the project team as a senior technical lead.	
Consultant (Inclusive of Travel & Related Expenses)	• Work under the supervision of the project manager and with technical guidance from the Architect • Engage independently with the client on requirement definition, solution feature mapping, solution design, infrastructure analysis, and acceptance testing • Take the lead in defining the details of the upgrade path and also execution of the upgrade steps	$307.00