

Memorandum



Date: July 7, 2022

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

Agenda Item No. 8(F)(2)

From: Daniella Levine Cava
Mayor

Resolution No. R-614-22

Subject: Recommendation for Approval to Award a Designated Purchase Contract:
ClearAudit Post-Election Audit Solution

Summary

This item is a designated purchase contract for a post-election audit solution to be used by the Elections Department (Elections). Award of this sole source contract to Clear Ballot Group, Inc., a non-local vendor, is recommended as the ClearAudit software solution is the only approved technology that meets the requirements set forth by the Florida State Division of Elections and has been certified by the State of Florida for such use. The Small Business Enterprise measures and Local Preference are not applicable as this is a sole source contract.

Florida Statute 101.591 requires the county canvassing board or the local board responsible for certifying the election to conduct a "manual audit" or an "automated, independent audit" of the voting systems used in randomly selected precincts after every election. This audit is verification that the election was coded correctly, voting units recorded the votes properly, and that results were tabulated accurately.

Historically, Elections has conducted a "manual audit." The ClearAudit solution gives Elections the ability to conduct an "automated, independent audit." Not only will this improve transparency and confidence in our elections by providing a more thorough audit of election results, but it allows Elections to utilize the latest available technology in elections administration to perform this process in a more organized and efficient manner.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve this request for award of Designated Purchase Contract No. SS-10231, *ClearAudit Post-Election Audit Solution*, to Clear Ballot Group, Inc. (Clear Ballot) for the Elections Department in the amount of \$954,768. 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 the "ClearAudit" software solution. There is no existing County contract for this type of software solution.

Background

The County has been performing a manual audit since the statutory requirement was established in 2007. This mandate requires a public manual tally of the votes cast in one randomly selected race that appears on the ballot in at least one percent, but no more than two percent of the precincts chosen at random. Vote totals for candidates or measures in the selected race are added up manually by Elections staff and compared to tabulated results.

This manual audit is a very labor-intensive process, especially in large elections, since staff must manually locate specific ballot pages among millions of sheets of paper in a short period of time, and then hand-tally the votes cast for applicable candidates or measures to compare to tabulated results. This process, while proven successful, continues to become more time-consuming and difficult as voter turnout increases. As an alternative to this manual audit, Florida law now allows for an "automated, independent audit," which requires a public automated tally of the votes cast across every race that appears on the ballot in at least 20 percent of the precincts chosen at random. This is a more thorough comparison of election results.

If the County acquires the ClearAudit Solution, Elections will no longer be required to manually locate applicable ballot pages post-election within a very narrow window prior to a state-mandated deadline.

Instead, ballots will now be re-scanned into this independent solution daily for Early Voting and Vote by Mail starting 15 days before the Primary or General election, leaving only Election Day ballots as the ballots that would need to be re-scanned after the election. This is a more organized approach and gives the Elections Department a significant time advantage. Transitioning to this system will not only result in a more thorough post-election audit across every race but will provide greater transparency while increasing voter confidence because it utilizes the newest available technology and modernizes the current process.

The ClearAudit system has already been purchased by 26 Florida counties, allowing those counties to realize the advantages associated with this system. These include large counties such as Broward, Palm Beach, Pinellas, Orange, Hillsborough, and Sarasota. Elections seeks to purchase this product now so that it can introduce this technology into their workflow for the 2022 election cycle.

In the future, ClearAudit can provide Elections with recounts, which is another valuable tool. Currently, the feature is pending certification with the Florida Secretary of State Division of Elections. This will modernize the way recounts are performed in the State of Florida, and Elections will benefit greatly once the certification process is complete.

Currently, when a recount is ordered, Elections has to hand sort ballot pages prior to rescanning them for a recount. This is a very time-consuming, labor-intensive task, which must be completed after the election within a very narrow window prior to a state-mandated deadline. In 2018, Elections conducted three statewide recounts. In response to the recount, Elections had to hire hundreds of temporary staff, working 24-hour shifts, to perform the manual sorting of ballot pages, and finished with no time to spare.

Once Elections can utilize this solution as an alternative for recounts, it will allow for a more methodical and efficient process while ensuring completeness and timeliness, particularly as voter turnout continues to increase and ballot length is uncertain. This process will ensure Elections will be ready to complete the recount significantly faster, in a more organized manner, and ultimately improving voter confidence. Final payment of the solution will be contingent on certification of the recount feature.

The initial term of this Contract runs from execution of the Contract by the County through December 31, 2024 to ensure that Elections will have use of this Solution through the election cycles in 2022 and 2024. The Contract also includes two, two-year options to renew terms for 2025-26 and 2027-28, and the ability to assign, transfer, or convey this Contract to an elected Supervisor of Elections when such office is established in Miami-Dade County. Because the initial term of this Contract ends on December 31, 2024 and the elected Supervisor of Elections does not take office until January 7, 2025, the Contract further specifies that any option to renew exercised by the County for 2025-26 is subject to ratification by the elected Supervisor of Elections within 30 days of that individual taking office and, if the elected Supervisor of Elections declines to ratify the renewal, then the Contract is terminated as of that date.

Competition for these goods and services are not practicable, as ClearAudit is the only approved technology that meets the requirements set forth by the Florida State Division of Elections and has been certified by the State of Florida for such use.

Accordingly, it is in the County’s best interest to award this designated purchase pursuant to Section 2-8.1(b)(3) of the County Code to purchase the ClearAudit Solution in an effort to meet requirements set forth by Florida Statutes. In addition, this Solution will modernize the audit and recount processes for Elections, eliminating the need to conduct these processes manually, and reducing and/or eliminating inefficiencies.

Scope

The scope of this item is countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact for the initial two-year term is \$954,768.

Department	Allocation	Funding Source	Contract Manager
Elections	\$954,768	Capital GGIF	Michael Johnson
Total:	\$954,768		

Track Record/Monitor

Dr. Lydia Osbourne of the Internal Services Department is the Division Director.

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 provisions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38. The two, two-year options to renew periods will be presented to the Board for approval under a separate agenda item and are subject to ratification by the elected Supervisor of Elections.

Vendor Recommended for Award

Pursuant to Resolution No. R-477-18, the awarded vendor does not have a local address, and no other vendor has been authorized by the Florida State Division of Elections to provide this type of solution.

Vendor	Principal Address	Local Address*	Number of Employee Residents	Principal
			1) Miami-Dade 2) Percentage*	
Clear Ballot Group, Inc.	2 Oliver Street Floor 2 Boston, MA	None	0	Steve Papa
			0%	

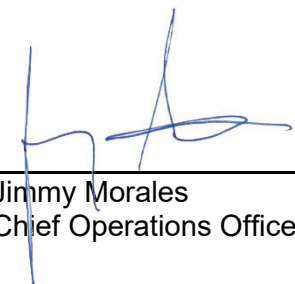
*Provided pursuant to Resolution No. R-1011-15. Percentage of employee residents is the percentage of vendor’s employees who reside in Miami-Dade County as compared to the vendor’s total workforce.

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 to this sole source contract.
- The Living Wage does not apply as the services to be procured are not covered services under the Ordinance.



Jimmy Morales
Chief Operations Officer



MEMORANDUM

(Revised)

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

DATE: July 7, 2022

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(F)(2)

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

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(2)
7-7-22

RESOLUTION NO. _____ R-614-22

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. SS-10231 FOR PURCHASE OF CLEARAUDIT POST-ELECTION AUDIT SOLUTION TO CLEAR BALLOT GROUP, INC. FOR AN INITIAL TERM OF TWO YEARS FOR AN AMOUNT NOT TO EXCEED \$954,768.00 FOR THE ELECTIONS DEPARTMENT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY CANCELLATION 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:

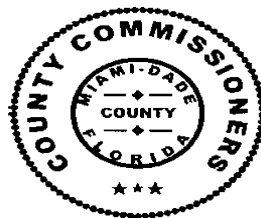
Section 1. This Board finds it is in the best interest of Miami-Dade County to award Contract No. SS-10231, in substantially the form attached and made a part hereof, to Clear Ballot Group, Inc. for purchase of ClearAudit Post-Election Audit Solution for an initial term of two years and for an amount not to exceed \$954,768.00 for the Elections 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 provisions, pursuant to section 2-8.1 of the County Code and Implementing Order 3-38.

The foregoing resolution was offered by Commissioner **Sen. Rene Garcia**,
 who moved its adoption. The motion was seconded by Commissioner **Kionne L. McGhee**
 and upon being put to a vote, the vote was as follows:

Jose "Pepe" Diaz, Chairman	aye		
Oliver G. Gilbert, III, Vice-Chairman	absent		
Sen. René García	aye	Keon Hardemon	aye
Sally A. Heyman	aye	Danielle Cohen Higgins	aye
Eileen Higgins	absent	Joe A. Martinez	aye
Kionne L. McGhee	aye	Jean Monestime	absent
Raquel A. Regalado	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 7th day of July, 2022. 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: **Basia Pruna**
 Deputy Clerk

Approved by County Attorney as
 to form and legal sufficiency.

Oren Rosenthal

Miami-Dade County, FL

Contract No.

ClearAudit Post-Election Audit Solution
Contract No.

THIS AGREEMENT for the provision of ClearAudit Software, made and entered into as of this _____ day of _____ by and between Clear Ballot Group, Inc., a corporation organized and existing under the laws of the State of Delaware, having its principal office at 2 Oliver Street, 2nd Floor, Boston, MA 02109 (the "Contractor" or "Clear Ballot"), 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" or "Customer") (collectively, the "Parties").

WITNESSETH:

WHEREAS, Florida Statute 101.591 requires Election Districts to conduct a manual audit or an automated, independent audit of the voting systems used in randomly selected precincts immediately following the certification of an election; and

WHEREAS, the Contractor is the developer and sole provider of the ClearAudit software solution (Solution), which enables an independent audit for the purpose of determining whether votes were counted accurately (a results audit); and

WHEREAS, in 2020, the State of Florida enacted Ch. 2020-109, Laws of Florida, which amended Fla. Stat. §§ 102.141 and 102.161 to authorize the use of automatic tabulating equipment that is not part of the voting system for recounts, require that such automatic tabulating equipment be certified by the Florida Department of State, and direct the Florida Department of State to establish procedures relating to the certification and use of automatic tabulating equipment that is not part of the voting system for recounts; and

WHEREAS, the Solution has the capability of being used in recounts as automatic tabulating equipment that is not part of the voting system; and

WHEREAS, Contractor has already applied with the Florida Department of State to certify the Solution for use in recounts; and

WHEREAS, certification of Contractor's Solution for use in recounts is currently pending before the Florida Department of State and is contingent upon final adoption by the Department of State of an administrative rule concerning recounts and the review and approval of Contractor's application; and

WHEREAS, the Contractor has offered to provide the Solution, Maintenance, and Support Services, on a non-exclusive basis, that shall conform to the Statement of Work (Appendix A); and

WHEREAS, the County desires to procure from the Contractor the Solution, Maintenance, and Support Services for the County, in accordance with the terms and conditions of this Agreement, for purposes of conducting both post-election audits and, upon certification, recounts,

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 "Acceptance Criteria" to mean a set of predefined requirements that must be met in order to approve the Solution for Final Acceptance.
- 1.2 The word "Agreement" to mean collectively the (i) Articles, (ii) Project Description, (iii) Service Level Agreement, (iv) all other appendices and attachments hereto, and (v) all amendments issued hereto.
- 1.3 The words "Article" or "Articles" to mean the terms and conditions delineated in this Agreement.

Miami-Dade County, FL

Contract No.

- 1.4 The words "Authorized Users" to mean County employees and such other types of users (if any) as may be expressly authorized in an Order and who are performing services solely for the benefit of the County. Unless otherwise expressly provided in the relevant Product Schedule, Authorized Users are limited to employees only and do not include the County's vendors, contractors, or any other third parties, including technology service providers.
- 1.5 The word "Contractor" to mean Clear Ballot Group, Inc. and its permitted successors.
- 1.6 The words "Contractor Products" to mean collectively, all Contractor Licensed Software, Documentation, Hardware, Services and the Data Visualization Portal. For the avoidance of doubt, the County's right to use the Vendor Products extends only to those specific Vendor Products identified in the applicable Order.
- 1.7 The words "Data Visualization Portal" to mean Vendor's portal, accessible via a username (email address) and password, that allows the County to access certain audit-related data.
- 1.8 The word "Days" to mean calendar days.
- 1.9 The word "Deliverables" to mean Work Product.
- 1.10 The words "Designated Jurisdiction" to mean the jurisdiction in which the Vendor Products will be used, and includes all jurisdictions for which the Designated Jurisdiction administers elections on behalf of. The Designated Jurisdiction shall be identified in the applicable Order.
- 1.11 The word "Documentation" means the documentation made generally available by Vendor to its customers for use of the Licensed Software, as updated from time-to-time by Vendor in its discretion.
- 1.12 The words "Final Acceptance" to mean the County's written approval, utilizing those forms contained in Attachment 1, indicating that a Deliverable has been successfully completed.
- 1.13 The words "Go-Live" to mean the written acceptance by both parties that all implementation portions of the Statement of Work have been completed and the Solution is fully operational in a production environment.
- 1.14 The word "Hardware" to means the hardware specifically identified on the applicable Order, if any.
- 1.15 The words "Intellectual Property Rights" to mean (i) patents, inventions, designs, copyright and related rights, moral rights, database rights, trademarks (and service marks) and related goodwill, trade names (whether registered or unregistered) and rights to apply for registration; (ii) trade secrets; (iii) proprietary rights in domain names; (iv) knowhow; (v) applications, extensions and renewals in relation to any of these rights; and (vi) all other rights of a similar nature or having an equivalent effect anywhere in the world.
- 1.16 The words "Licensed Software" to mean Contractor's proprietary software, databases, and/or computer programs (including, without limitations all schema and designs of such proprietary software, databases and/or computer programs) that are identified on the applicable Order, including any bug fixes, updates and new releases thereof that may be made generally available by Vendor from time to time as part of Support Services. The term "Licensed Software" also includes any and all Documentation applicable to such computer programs.
- 1.17 The word "Order" to mean a request to license the specific Contractor Products identified on the Order. Pursuant to the terms of this Agreement. A SOW may be attached to an Order as an Exhibit, however if a SOW is executed on a stand-alone basis, it is considered an Order for the purposes of this Agreement.
- 1.18 The words "Professional Services" to mean those testing, installation, setup, training, ballot design, digital audit, consulting or other services provided by Vendor pursuant to an Order or SOW.
- 1.19 The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.

Miami-Dade County, FL

Contract No.

- 1.20 The words "Scope of Use" to mean the specific scope of use for which the County is permitted to use the Vendor Products. By way of example, this may include setting up the necessary infrastructure to create an election, defining an election and tabulating and reporting election results in the Designated Jurisdiction, auditing election results, etc. The County is only permitted to use the Vendor Products for activities if such activities are clearly identified in the Scope of Use for the applicable Order.
- 1.21 The words "Service" to mean collectively, any Support Services or Professional Services, both as defined below, purchased by the County under an Order.
- 1.22 The word "Source Code" to mean computer programs written in higher-level programming languages, sometimes accompanied by English language comments. Source Code is intelligible to trained programmers and may be translated to object code for operation on computer equipment through the process of compiling.
- 1.23 The word "SOW" to mean a Statement of Work signed by the duly authorized representatives of both parties that sets forth and describes Services to be provided hereunder, the fees to be paid, and any other terms agreed upon by the parties. A SOW may be attached to an Order as an Exhibit.
- 1.24 The words "State Certification Approval" to mean the day ClearAudit version 1.4.8, or equivalent, receives certification from the Florida Department of State. For the avoidance of doubt, State Certification Approval shall mean the certification of the ClearAudit version 1.4.8 and shall include recounts within such certification.
- 1.25 The word "Subcontractor" or "Subconsultant" to mean any person, entity, firm, or corporation, other than the employees of the Vendor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Vendor and whether or not in privity of Agreement with the Vendor.
- 1.26 The word "Support Services" means the standard maintenance and support services offered to the County as detailed in the support exhibit attached to the applicable Order.
- 1.27 The words "Work Product" to mean Work Product Type 1 and Work Product Type 2. In the event Work Product is not identified in the Order or SOW as being Work Product Type 1 or Work Product Type 2, it shall be deemed Work Product Type 2.
- 1.28 The words "Work Product Type 1" to mean any work product or deliverables developed specifically for County by Contractor in the performance of the Professional Services and specifically identified in the SOW or Order (as applicable) as Work Product Type 1.
- 1.29 The words "Work Product Type 2" to mean any work product or deliverables that are provided to County under the SOW or Order (as applicable) and are not specifically identified in the SOW or Order (as applicable) as Work Product Type 1.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) Articles 1 through 57, 2) Appendix A – Statement of Work, 3) Appendix B – Service Level Agreement, and 4) Appendix C – Payment Schedule.

ARTICLE 3. RULES OF INTERPRETATION

- 3.1 References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- 3.2 Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- 3.3 The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- 3.4 The terms "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean

Miami-Dade County, FL

Contract No.

respectively, the direction, requirement, permission, order, designation, selection or prescription of the Project Manager.

- 3.5 The terms "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the Project Manager.
- 3.6 The titles, headings, captions, and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify, or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- 4.1 This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the Parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered, or amended only by a written amendment duly executed by the Parties hereto or their authorized representatives.
- 4.2 The Contractor shall provide the services set forth in the Statement of Work and render full and prompt cooperation with the County in all aspects of the Work performed hereunder.
- 4.3 Intentionally omitted.
- 4.4 Except as set forth in the applicable Order or SOW, the Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work necessary for the completion of this Contract.
- 4.5 The Contractor acknowledges that the County shall make all policy decisions regarding the Statement of Work. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor shall use commercially reasonable efforts to implement such changes in providing Services hereunder as a result of a policy change implemented by the County if mutually agreed upon in a SOW or change order, for an addition fee. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective on the date of the Parties' execution shall continue through December 31, 2024. The County, at its sole discretion, may renew this Contract for two (2), two (2) year option to renew terms with both such terms concluding on December 31st of the relevant even-numbered year. With respect to any options to renew exercised by the County, Contractor agrees and acknowledges that such renewal shall be subject to ratification by an elected Supervisor of Elections within 30 days of the creation of such office in Miami-Dade County and that, if the elected Supervisor of Elections provides notice in writing to Contractor that it has declined to ratify the option-to-renew, then the Contract shall terminate on the date of such notice and the Contractor shall only be entitled to the pro-rata amount of that year's Support Services fees from the beginning of the calendar year to the date of such written notice.

The County may extend this Contract for up to an additional one hundred-eighty (180) calendar days beyond the current Contract period and, if exercised, any option to renew terms, and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period, by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners (the "Board").

ARTICLE 6. DELIVERY

- 6.1 Delivery of the Solution shall be according to Appendix A – Statement of Work and Section 6.2.
- 6.2 Documentation. The Contractor shall provide electronic copies of the available associated Documentation for the System to the County upon Go-Live.

ARTICLE 7. LICENSE AND RESTRICTIONS

- 7.1 Grant of License for Licensed Software. Subject to the terms and conditions of this Agreement, during the Licensed Software Term (as defined in the Order) Contractor grants to the County a limited, nonexclusive, nontransferable, non-sublicensable license to use the Licensed Software identified in the applicable Order solely in the Designated Jurisdiction and for the Scope of Use set forth in the applicable Order. If object code is provided, the County may make a single copy of the object code of the Licensed Software for backup and archival purposes. The County will not receive, and may not access the Source Code of any Licensed Software. Unless expressly stated on the applicable Order, County may not access or use the Contractor Products on behalf of any third party.
- 7.2 Hardware. If Hardware is included in the applicable Order and subject to the terms of this Agreement, Contractor will provide the Hardware to the County for use in connection with Contractor Products. If the County has purchased the Hardware, title and all risk of loss with respect to the Hardware will pass to the County upon shipment by Contractor. The County shall keep the Hardware free of all security interests, liens and other encumbrances. The County will use reasonable care in the use of the Hardware and protect the Hardware from theft, damage or misuse. The County assumes the entire risk of loss, damage, or theft of the Hardware while in the County's possession. The County will use the Hardware solely in connection with the Contractor Products and in technical configuration specified by the Contractor in the Documentation. In the event that the Hardware includes or incorporates any software code (include without limitation any firmware, operating system or other software), such software code shall be deemed "Licensed Software" licensed to the County solely under the terms of this Agreement.
- 7.3 Support Services. Support Services are further described in Appendix B – Service Level Agreement. The County acknowledges and agrees that it is required to purchase Support Services for the Contractor Products during the entirety of the Licensed Software Term.
- 7.4 Access to Data Visualization Portal. If access to the Data Visualization Portal is provided as part of the Contractor Products ordered by the County under the applicable Order, then subject to the terms and conditions of this Agreement, Contractor grants the County a limited, nonexclusive, nontransferable, non-sublicensable right to access the Data Visualization Portal during the term set forth in the applicable Order for the Scope of Use specified in the applicable Order.
- 7.5 Restrictions on Use. Contractor Products shall be used solely for the Scope of Use set forth in the applicable Order and not for any other purpose or use. Authorized Users may use the Contractor Products solely on the County's behalf in accordance with this Agreement and the applicable Order and not for any other purpose or use. The County shall ensure Authorized Users comply with all relevant terms of this Agreement and any breach by an Authorized User will constitute a breach by the County. The County may not (i) use or permit the Contractor Products to be used in any manner, whether directly or indirectly, that would enable The County's employees, agents, or any other person or entity to use the Contractor Products in any jurisdiction other than the Designated Jurisdiction or for anyone's benefit other than the County, (ii) rent, sell, assign, lease, sublicense, or otherwise transfer the Contractor Products, (iii) derive or attempt to derive the Source Code, source files, or structure of all or any portion of the Contractor Products by reverse engineering, disassembly, decompilation, or any other means, except to the extent permitted by applicable law, (iv) copy, translate, port, modify, or make derivative works based on the Contractor Products, (v) use the Contractor Products except as set forth in the Documentation, (vi) use the Contractor Products or Contractor Confidential Information to contest the validity of any Contractor intellectual property; (vii) use the Contractor Products in a manner to compete with Contractor, to create a product or service that competes with Contractor, or to assist a third party in competing with Contractor; (viii) use the Contractor Products outside the Designated Jurisdiction; (ix) operate a service bureau or other similar service for the benefit of third parties using the Contractor Products; (x) export, directly or indirectly, the Contractor Products from the United States; or (xi) disclose the Contractor Products to any non-U.S. national in the United States in violation of any United States export or other similar law (e.g., unauthorized "deemed exports"). The County shall take reasonable precautions to prevent unauthorized or improper use or disclosure of the Contractor Products. The County shall not remove, alter, or obscure any trademark, proprietary label or notice accompanying or incorporated in the Contractor Products. The County may not (a) provide any portion of the Licensed Software to any person or entity who is not authorized to access or use it under this Agreement; and (b) attempt to access any Vendor systems, programs or data that are not made available for County's use under the Order or SOW.
- 7.6 Minimum System Configuration. The minimum hardware and software requirements for proper operation of the Licensed Software are set forth in the Order or the relevant Documentation, which may be updated from time to time. The County shall be solely responsible for purchasing, providing, and installing all other required equipment, peripherals, and hardware not included in the Statement of Work. The Licensed Software must be used with the Hardware as described in the Documentation, and all warranties, support and indemnification obligations hereunder are void if the Licensed Software is used with any other hardware or in any

Miami-Dade County, FL

Contract No.

manner other than in the technical configuration specified by Contractor. The requirements listed in this section refer to the requirements of Contractor, and do not refer to any state-specific hardware requirements that may be in place. It is the County's responsibility to ensure that it understands and complies with any state-specific hardware requirements.

- 7.7 **Intellectual Property Ownership.** The Contractor Products contain material that is protected by United States copyright, trade secret law and other intellectual property law, and by international treaty provisions. All rights in and to the Contractor Products not expressly granted to the County under this Agreement are reserved by Contractor. As between the County and Contractor, all copyrights, patents, trade secrets, trademarks, service marks, tradenames, moral rights and other intellectual property and proprietary rights in the Contractor Products will remain the sole and exclusive property of Contractor or its licensors, as applicable. The County agrees and acknowledges that Contractor will be the exclusive owner of all right, title and interest in and to all software, programming, tools, documentation, materials, and other intellectual property of any kind used, developed, or delivered by Contractor to the County in connection with this Agreement; and this is not a work-made-for-hire agreement under Section 101 of Title 17 of the United States Code. The County acknowledges and agrees that Contractor will retain the unlimited right to use and to sublicense to others the ideas, designs, concepts, techniques, or other expertise which Contractor may develop or employ in providing the Contractor Products, in any products and for any lawful purposes.
- 7.8 **Feedback.** The County may provide suggestions, comments, or other feedback (collectively, "Feedback") to Contractor with respect to its products and services, including the Contractor Products. Feedback is voluntary and Contractor is not required to hold it in confidence and may use Feedback for any purpose without obligation of any kind. To the extent a license is required under the County's intellectual property rights to make use of the Feedback, the County hereby grants Contractor an irrevocable, non-exclusive, perpetual, royalty-free license to use the Feedback in connection with Contractor's business, including enhancement of the Contractor Products.
- 7.9 **Aggregated Data.** The County acknowledges and agrees that both during the term of this Agreement and thereafter, Contractor may collect, analyze, copy, display and use Aggregated Data for the purpose of providing, operating, analyzing, and improving the Contractor Products. Contractor will not disclose any Aggregated Data unless it is in aggregated and anonymized form that would not permit a third party to identify the data as associated with the County. "Aggregated Data" means anonymized or aggregated data, statistics, and analysis derived from the County's use of the Contractor Products.
- 7.10 **Modification of Contractor Products.** Except as otherwise expressly agreed in writing by the parties, Contractor is not responsible for any: (a) modification to the Contractor Products by the County or any third party engaged by the County, (b) failure by the County to follow reasonable instructions provided by Contractor for the care and maintenance of Contractor Products, (c) failure by the County to reasonably implement any improvements or updates to the Vendor Products as supplied by Contractor, (d) use of the Contractor Products not strictly in the manner recommended in the Documentation; or (e) any material failure by The County to use due care in the use and validation of the results produced by the Contractor Products.
- 7.11 **County Representations.** The County represents, warrants, and/or covenants to Contractor that: (a) the Contractor Products will be used only (i) by the County and its Authorized Users, (ii) in the manner for which it was intended, (iii) in accordance with all applicable manuals and instructions, and (iv) in compliance with all applicable laws and regulations, (b) it has the authority to enter into this Agreement, (c) the person executing this Agreement on behalf of the County has been duly authorized and has all required approvals, (d) by entering into this Agreement, the County is not in violation of any laws or agreements applicable to the County, and (e) the County shall not modify, alter, or add to the Contractor Products without the prior written consent of Contractor.

ARTICLE 8. FUNCTIONALLY EQUIVALENT SOFTWARE

During the term of this Agreement, for as long as the County remains current on Support Services fees for the Licensed Software, the Contractor is obligated to provide maintenance and support for the Licensed Software pursuant to the Contract in accordance with Appendix B. In the event the Contractor should wish to discontinue maintenance and support of the then current version of the Licensed Software as set forth in Appendix B – Service Level Agreement or any amendment thereto, and as long as the County is current on Support Services, Contractor shall be required to provide to the County, free of charge, and with reasonable time to allow for uninterrupted use by the County, a new version of the Licensed Software, if one is generally made available to all Contractor customers of the Licensed Software current on Support Services, which shall replace the previous version and perform the functions described in Appendix B – Service Level Agreement or any amendment thereto, and to support and maintain such new version of the License Software for the balance of the term of this Agreement without additional costs to the County, other than the payment of applicable Support Services fees.

Miami-Dade County, FL

Contract No.

The foregoing does not apply if the County requires new Hardware in order to continue to run the Licensed Software. The County is responsible for all such Hardware fees.

In the case that Contractor is providing support of the then current version of the Licensed Software being used by the County, Contractor shall only provide any new version of the License Software if the County is current on Support Services and there are no outstanding account receivables and the new License Software is generally made available to all Contractor's customers current on support. Any License Software that includes additional functionality or modules that the County wishes to use may require fees which fees shall be mutually agreed upon in writing by the parties herein.

In the event of a conflict between this Article 8 and any other Articles contained within this Agreement, this Article 8 will prevail.

ARTICLE 9. PURCHASE OF ADDITIONAL PRODUCTS AND SERVICES

Additional products and services related to the Licensed Software for which the Contractor is the proprietary provider or authorized reseller/distributor may be purchased during the term of the Contract. In the event the County wishes to purchase such additional items and/or services, a County representative will contact the Contractor to obtain a price proposal for the additional products and/or services. In the event that the County opts to proceed with the purchase, an amendment or ordering document will be mutually agreed upon by the parties and executed in writing.

ARTICLE 10. PROFESSIONAL SERVICES

- 10.1 If the Contractor fails to provide Work Product in material conformance to the specifications set forth in the SOW, then the County may reject the delivered Work Product or may accept any item of Work Product and reject the balance of the delivered Work Product. Within 30 days from the date of delivery of the applicable Work Product, the County shall notify Contractor of such rejection in writing and specify in such notice, the reasons for such rejection. Contractor agrees to deliver a fix or workaround replacement for the Work Product for such items of rejected Work Product within fifteen (15) business days of Contractor's receipt of the County's rejection notice.
- 10.2 Contractor agrees to install the required Hardware at the locations specified. Contractor agrees to commence installation of the Hardware according to the Project Schedule unless a different time for implementation is otherwise mutually agreed upon by the parties hereto. All implementation services will be performed during normal business hours whenever possible, however some services to be provided may be required outside of normal business hours to accommodate County operations. Work to be performed outside normal business hours will be mutually agreed by both parties. Contractor shall diligently pursue and complete such implementation services in accordance with the Project Schedule, so that such Contractor Products are in good working order and ready for use by the dates set forth in the Project Schedule (if any).
- 10.3 Contractor agrees to perform activities necessary for proper implementation of the entire Solution and to perform its implementation obligations hereunder in an orderly, skillful and expeditious manner, with sufficient labor and materials to ensure efficient and timely completion of such obligations. If applicable, Contractor shall coordinate with the Project Manager all Work with all other Contractors and/or County personnel performing work to complete the installation of the Solution. The County shall be responsible for resolving all disputes relating to County owned site access between Contractor and/or County personnel. Contractor shall provide all materials necessary to properly implement the Solution. The County shall provide reasonable working and secure storage space for the performance by Contractor of the implementation services described herein.
- 10.4 Solution testing shall consist of the tests described in the Appendix A – Statement of Work which are to be conducted collectively by the Contractor and the County. The purpose of these tests is to demonstrate the complete operability of the Solution in conformance with the requirements of the Contract. This will include an actual demonstration of all required Solution functionality. All tests shall be in accordance with test plans and procedures prepared by Contractor and previously approved by the County. In the event of any outstanding deficiencies at the conclusion of installation testing, as determined by the County, Contractor shall be responsible for instituting necessary corrective measures, and for subsequently satisfactorily demonstrating and/or re-demonstrating performance of the Solution.

Miami-Dade County, FL

Contract No.

- 10.5 Either party may request a change to a SOW, and for such purpose shall submit to the other party a written notice ("Change Request") setting forth the requested change and the reason for such request. The parties shall discuss the necessity, desirability and/or acceptability of the Change Request. When and if both parties have agreed in writing upon the changes, and any resulting change in the estimated fees for the Services, the parties shall complete and execute a change order ("Change Order") or a new or revised SOW.
- 10.6 Contractor shall have sole discretion in staffing the Professional Services and may assign the performance of any portion of the Professional Services to any subcontractor; provided that Contractor shall be responsible for the performance of any such subcontractor. County shall designate at least one employee with knowledge of County's business Contractor's technology and services as its primary contact to be available for communication with Contractor in providing the Professional Services. County will (a) cooperate with Contractor, (b) provide Contractor with timely access to accurate and complete information, data and materials, (c) provide Contractor with such assistance and access as Contractor may reasonably request, and (d) fulfill its responsibilities as set forth in this Agreement and the SOW. If Contractor personnel are required to be present on a County site, County will provide adequate workspace and may provide reasonable worksite safety and security rules to which such personnel are to conform. Unless otherwise set forth in the SOW, all resources and information that are required for Contractor to perform the Services shall be provided at County's expense. County is responsible for the procurement of any necessary permits or licenses required for the design, production, testing or operation of any Work Product hereunder and costs incidental thereto unless otherwise agreed in the SOW.
- 10.8 Unless specified otherwise in the SOW, the cost estimate for Professional Services, as set forth in the SOW, is a budgetary estimate and is not a firm fixed price quotation and the Professional Services shall be provided on a time and material basis at the rates set forth in the SOW. If Clear Ballot, at any time, determines that the cost of the Professional Services is expected to exceed the budgetary estimate, Contractor will notify the County and obtain the County's approval prior to exceeding the budget. Contractor shall not be obligated to continue with any work which would cause Contractor to exceed the budgetary estimates if County does not approve exceeding the budget. If actual costs are less than the budgetary estimate, only actual costs will be billed.
- 10.9 Except for Contractor Pre-Existing IP (as defined below) which shall continue to be owned by Contractor, any Work Product Type 1 delivered under a SOW shall be the property of County upon County's payment in full of all associated fees due hereunder.

Contractor hereby grants to County a non-exclusive, non-transferable license to use any Work Product Type 2 delivered to County upon County's payment in full of all amounts due hereunder. Work Product Type 2 shall be used by County solely in conjunction with, and consistent in scope with, County's permitted use of the Licensed Software under this Agreement.

"Contractor Pre-Existing IP" shall mean any and all software, hardware, information, technology, configurations, training materials, tools, methodologies, data, designs, ideas, concepts, know-how, techniques, materials, data, algorithms, and other information owned or licensed by Contractor prior to the commencement or independent of the Professional Services and all intellectual property rights therein, some of which may be used by Contractor in performance of the Professional Services or the development of the Work Product hereunder, and shall also include any enhancements or modifications made by Contractor to the Contractor Pre-Existing IP while performing the Services hereunder. All Contractor Pre-Existing IP is the sole property of Contractor. County acknowledges and agrees that Contractor is in the business of providing the Contractor Products, and as such will retain the unlimited right to use and to sublicense to others the ideas, designs, concepts, techniques or other expertise which Contractor may develop or employ in providing the Professional Services, including those ideas, concepts, techniques acquired in developing the Work Product, in any products and for any purposes (including providing services and developing work product for other customers), provided that the same are (i) of general application and (ii) not based on and do not contain County Confidential Information. For the avoidance of doubt, Contractor may create the same or similar work product for other customers without liability or obligation to County. To the extent that Contractor incorporates any Pre-Existing IP into any Work Product, then Contractor hereby grants County a royalty-free, non-exclusive, non-transferable license to use such Pre-Existing IP delivered to County solely as necessary for and in conjunction with and not separate from County's use of the Work Product.

ARTICLE 11. TEST

Miami-Dade County, FL

Contract No.

The Contractor shall configure and program the Solution to conform to Appendix A – Statement of Work. The Software and Hardware will be subject to several tests, including a Solution Acceptance Test as further defined in the Appendix A - Statement of Work, Project Schedule, and Acceptance Criteria to be developed and agreed by both parties. To assure Solution performance, the County's Project Manager will coordinate all testing of the Solution and provide Final Acceptance of Go-Live upon completion of all milestones and Deliverables as outlined in the Appendix A - Statement of Work.

Failure of the Solution to satisfy the Acceptance Criteria and conform to the requirements set forth in Appendix A - Statement of Work by the timeframes set forth in the Project Schedule may result in the County withholding payment until satisfactory acceptance is granted to the Contractor.

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

- a) Contractor's Project Manager will provide written notice to the County Project Manager of modifications, fixes, enhancements of the Equipment, and/or new releases of the software available for testing.
- b) The Contractor's Project Manager will coordinate all user Acceptance Testing dates, acceptance criteria, and training for the new functionality for the test group.
- c) The County will be granted a timeframe agreed to by both parties in writing to perform testing based on the outlined functionality being delivered to the County on the Acceptance Criteria sign off sheet.
- d) The County's Project Manager will provide the Contractor with written notice of acceptance (sign-off) or rejection (with documented material nonconformities in the functionality) within 5 business days, unless more time is needed, in which case the County will notify the Contractor in writing accordingly.
- e) Deficiencies found will be noted on the Acceptance Criteria sign off sheet and the Contractor will be provided an opportunity to correct the issues. The Contractor will be required to provide the County with an updated timeline and work around (fix) within three (3) business days unless additional time is requested in writing and agreed by both parties.
- f) Once the release is accepted, the functionality will be moved into the production module. And updated documentation will be provided to the County.

ARTICLE 12. REVIEWING DELIVERABLES

12.1 The Contractor agrees to submit all Deliverables required to be submitted for review and approval by the County in accordance with the specific requirements in Appendix A - Statement of Work. The Contractor understands that the County shall have final approval on all Deliverables.

In reviewing the Deliverables, the Contractor understands that the County will provide the Contractor with:

- a) a written notification of the County's approval,
- b) a written notification that each Deliverable is approved subject to the Contractor providing prompt correction of a minor deficiency, or,
- c) in the case of a Deliverable that does not meet the requirements of the Agreement, a written notification of the County's disapproval. The County's disapproval notification will state with reasonable detail to sufficiently advise the Contractor of the basis on which the Deliverable was determined to be unacceptable.

12.2 The Contractor understands that failure by the County to provide a notice of approval does not constitute approval.

Miami-Dade County, FL

Contract No.

Furthermore:

- a) For each Deliverable made hereunder, the County shall determine whether the Deliverable is approved as submitted, is approved subject to the correction by the Contractor of minor discrepancies, or whether it is unacceptable and therefore disapproved.
- b) Unless an extension of time has been granted by the County, within five business days after receipt of the County's notification of "disapproval", the Contractor shall deliver to the County the necessary revisions and/or modifications for a second review by the County, unless the revision requires additional or replacement Hardware, which may require additional time.
- c) If after the second review period the Deliverable remains unacceptable for the County's approval, the County may direct the Contractor to:
 - i. Proceed with the Work subject to the correction of all outstanding deficiencies which led to the County's determination that a Deliverable was not acceptable for approval on or before a specific date established by the County for correcting such deficiency or deficiencies; or,
 - ii. Suspend all Work being performed in regard to the execution of the Agreement, except those services necessary for the correction of outstanding deficiencies, until such time that all such outstanding deficiencies have been corrected by the Contractor and resubmitted to the County for approval.
- d) The County shall have the right to approve or accept part of any Deliverable. Any such approval shall be regarded as partial and conditional upon the County's approval or acceptance of all aspects of the Deliverable. The Contractor must correct any deficiencies within the time the County specifies for such correction in the County's notice concerning a partial approval (including approvals subject to correction of minor deficiencies) or, if no time is given, promptly. If the County does not subsequently approve or accept all aspects of the Deliverable, the earlier conditional acceptance or approval may, in the sole absolute discretion of the County, be regarded as void and of no effect.

ARTICLE 13. INTENTIONALLY OMITTED**ARTICLE 14. 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: Michael Johnson
 Phone: (305) 499-8581
 E-mail: Michael.Johnson4@miamidade.gov

and

- b) to the Contract Manager:

Miami-Dade County

Miami-Dade County, FL

Contract No.

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

Clear Ballot Group, Inc.
2 Oliver Street, 2nd Floor
Boston, MA 02109

Attention: Chief Financial Officer
Phone: (857) 250-4961
E-mail: contracts@clearballot.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 15. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The compensation for all Work performed under this Contract, including all costs associated with such Work and Services, shall be paid in accordance with Appendix C - Payment Schedule. 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.

If County fails to pay Contractor charges (other than charges disputed in good faith) within sixty (60) days after the applicable due date of the invoice, Contractor may suspend County's right to access and use the Contractor Products under this Agreement. For clarity, Contractor will not initiate suspension while County is disputing charges reasonably and in good-faith and is cooperating diligently in resolving the dispute.

ARTICLE 16. PRICING

Other than annual increases that may be set forth in the applicable Order, prices shall remain firm and fixed for the term of the Contract, including any extension periods, pursuant to Appendix C - Payment Schedule; however, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any extension thereof. The foregoing does not apply to any additional Hardware ordered. Any additional Hardware ordered shall be at then-current pricing, which shall be provided to the County upon request.

ARTICLE 17. 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 Appendix C - Payment Schedule. Software Licenses are billed annually in advance. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by 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

Miami-Dade County, FL

Contract No.

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.

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
Elections Department
2700 NW 87th Avenue
Miami, Florida 33172
Attention: Jose Ponce
Email: Jose.Ponce@miamidade.gov

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

ARTICLE 18. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature brought by a third party arising out of, relating to or resulting from an allegation that the County's permitted use of the Contractor Products under this Agreement infringes the United States patent, copyright or trade secret rights of a third party. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and reasonable attorney's fees which may issue thereon.

Notwithstanding the foregoing, Contractor will have no obligation with respect to any claim of infringement that is based upon or arises out of (a) the use or combination of the Contractor Products with any hardware, software, products, data, or other materials not provided by Contractor, where such claim would not have arisen but for such use or combination, (b) modification or alteration of the Contractor Products by anyone other than Contractor where such claim would not have arisen but for such modification or alteration, (c) use of the Contractor Products in violation of this Agreement, (d) any specifications, requirements, data, or intellectual property provided by County (collectively, the "Excluded Claims").

If the Contractor Products are held to infringe (or, if Contractor determines in its sole discretion that it may be held to infringe), Contractor shall, at its own expense, in its sole discretion: (a) procure a license that will protect County against such claim without cost to County; (b) replace the impacted Contractor Products with non-infringing materials without material loss of functionality; or (c) if (a) and (b) are not commercially reasonable, terminate this Agreement or the applicable Order and refund to the County a prorated portion of the unused prepaid fees for the infringing Contractor Products. The rights and remedies granted County under this Article 18 state Contractor's entire liability, and County's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party.

The indemnified party shall (i) promptly notify the indemnifying party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying party's obligation except to the extent it is prejudiced thereby, and (ii) to the maximum extent permitted by applicable law, with advice of the Attorney General of the relevant jurisdiction if such advice is required by applicable law, allow the indemnifying party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement; provided that the indemnifying party shall not settle any claim without the indemnified party's prior written consent (such consent not to be unreasonably withheld or delayed). The indemnified party shall also provide the indemnifying party with reasonable cooperation and assistance in defending such claim (at the indemnifying party's cost).

Miami-Dade County, FL

Contract No.

The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents, and instrumentalities as herein provided.

Upon County's notification, the Contractor shall furnish to 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 as required by Florida Statute 440 or any applicable jurisdiction.
- B. Commercial General Liability to include personal & advertising injury Liability in an amount not less than \$1,000,000 per occurrence \$2,000,000 in the aggregate.
- C. Automobile Liability insurance covering all owned, non-owned and hired vehicles in an amount not less than \$1,000,000 combined single limit.
- D. Professional liability for a minimum of \$2,000,000 each occurrence/aggregate.
- E. Cyber Liability for a minimum of \$2,000,000 each occurrence/aggregate. To include Network security & privacy liability, regulatory costs & fines, cyber event costs, incident response costs, legal, forensic & breach management costs.

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.

OR

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

Miami-Dade County, FL

Contract No.

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 19. MANNER OF PERFORMANCE

- 19.1 The Contractor shall provide the Work described herein in a competent and professional manner in accordance with the terms and conditions of this Agreement. The County shall be entitled to full and prompt cooperation by the Contractor in all aspects of the Work. At the request of the County for any reasonable and legal reason, the Contractor shall promptly remove from the Project any Contractor's employee, Subcontractor, or any other person 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.
- 19.2 Intentionally omitted.
- 19.3 The Contractor always agrees that it will employ, maintain, and assign to the performance of the Work a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so, directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position. Any additional staffing must be mutually agreed upon in a change order and is subject to additional fees.
- 19.4 The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character, and licenses as necessary to perform the Work described herein, in a competent and professional manner.
- 19.5 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.
- 19.6 The Contractor shall comply with all provisions of all federal, state, and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 20. EMPLOYEES OF THE CONTRACTOR

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 21. INDEPENDENT CONTRACTOR RELATIONSHIP

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 22. DISPUTE RESOLUTION PROCEDURE

- 22.1 The Contractor must seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with

Miami-Dade County, FL

Contract No.

the procedures set forth in this Article. **Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.**

22.2 Good Faith Efforts to Resolve. The parties to this Agreement shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Agreement in accordance with the provisions set forth in this Article 22, Dispute Resolution Procedure. The Contractor and County Project Manager shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, to address and work toward resolution of issues that arise in performance of this Agreement and any applicable statement of Work or Services. Issues shall be escalated to successive management levels as needed.

22.3 Informal Dispute Resolution. If a dispute develops between the parties concerning any provision of this Agreement, or the interpretation thereof, or any conduct by the other party under these agreements, and the parties are unable to resolve such dispute within five (5) business days or longer, that party, known as the Invoking Party, through its applicable Project Manager, shall promptly bring the disputed matter to the attention of the non-Invoking Party's Project Manager or designated representative, as the case may be, of the other party in writing ("Dispute Notice") in order to resolve such dispute.

22.4 Discovery and Negotiation / Recommended Procedures. Upon issuance of a Dispute Notice, the Project Managers or designated representative shall furnish to each other all non-privileged information with respect to the dispute believed by them to be appropriate and germane. The Project Managers shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding. If such dispute is not resolved by the Project Managers or designated representative within five (5) County Work Days of issuance of the Dispute Notice, or such other time as may be mutually allowed by the Project Managers as being necessary given the scope and complexity of the dispute, the Project Managers may, depending upon the nature, scope, and severity of the dispute, escalate the dispute as indicated below:

County Work Days	Contractor's Representative	County Representative
10	Contractor's Project Manager	County's Project Manager
10	Contractor's Sr. Vice President of Sales	Deputy Supervisor of Elections
20	Contractor's COO or President	Supervisor of Elections

22.5 Formal Dispute Resolution. At any point after issuance of a Dispute Notice under this section, either party may request and initiate formal non-binding mediation before a single mediator, which mediation shall be completed within thirty (30) days of initiation or such longer time as may be agreed upon by both parties as being necessary for the mutual selection of a mediator and scheduling of such mediation. Any such mediation shall be convened and conducted in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700 et seq. of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize any pending termination remedies and commence litigation in a court of competent jurisdiction. Each party shall bear its own costs and attorney's fees for mediation or arbitration of an issue arising under this Agreement.

22.6 Right to Terminate Reserved. Regardless of the dispute resolution procedures provided for in this Article 22, Dispute Resolution, nothing herein shall affect, delay, or otherwise preclude a party from terminating this Agreement in accordance with the provisions of Article 33, Termination, it being understood that these dispute resolution procedures are intended as a means of resolving disputes both during the term of this Agreement and after termination or expiration thereof.

22.7 Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

Miami-Dade County, FL

Contract No.

22.8 This Article will survive the termination or expiration of this Agreement.

ARTICLE 23. MUTUAL OBLIGATIONS

23.1 This Agreement, including attachments and appendices to the Agreement, shall constitute the entire Agreement between the Parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of the Parties.

23.2 Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

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

ARTICLE 24. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain complete and accurate records to substantiate compliance with the requirements set forth in the Agreement. The Contractor shall retain such records, and all other documents relevant to the Work furnished under this Agreement for a period of three years from the expiration date of this Agreement and any extension thereof.

ARTICLE 25. AUDITS

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

Pursuant to Section 2-481 of the Code, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds within five business days of the Commission Auditor's request. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 26. SUBSTITUTION OF PERSONNEL

In the event the Contractor needs to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution. However, such substitution shall not become effective until the County has approved said substitution.

ARTICLE 27. CONSENT REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title, or interest in or to the same or any part thereof without the prior written consent of the County. Notwithstanding the foregoing, to the maximum extent permitted by applicable law, Contractor may assign this Agreement and all Orders as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets provided the resulting use, functionality, and support of the Vendor Products remains consistent with the terms of this Agreement and with the scope of use made by assigning party immediately before the assignment. If consent is required by applicable law to assign this Agreement, such consent shall not be unreasonably withheld.

In addition to the foregoing, the Contractor agrees and acknowledges that the County may assign, transfer, convey or otherwise dispose of this Agreement, including the County's rights, title, or interest in or to the same or any part thereof to an elected Supervisor of Elections upon the creation of such office in Miami-Dade County without any further consent from the Contractor. Upon the assignment, transfer or conveyance of the Contract to the elected Supervisor of Elections, the County shall be relieved of all obligations under this Contract assumed by the elected Supervisor of Elections. The County shall provide notice of such action to the Contractor within 30 days of any such assignment, transfer or conveyance.

Miami-Dade County, FL

Contract No.

ARTICLE 28. SUBCONTRACTUAL RELATIONS

- 28.1 If the Contractor causes any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts, omissions, and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- 28.2 At any time during the term of this Agreement, the County may request the name of any Subcontractor, the portion of the Work which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- 28.3 Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Work to be performed. Such Work performed by such Subcontractor will strictly comply with the requirements of this Contract.
- 28.4 Intentionally omitted.
- 28.5 The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the Subcontractor will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. . Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any Subcontractor hereunder as more fully described herein.

ARTICLE 29. INTENTIONALLY OMITTED**ARTICLE 30. SEVERABILITY**

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

ARTICLE 31. DISCLAIMER OF OTHER WARRANTIES

EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTOR PRODUCTS ARE PROVIDED TO THE COUNTY "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTOR EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY OF INFORMATION, QUIET ENJOYMENT, AND FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR DOES NOT WARRANT THAT CONTRACTOR PRODUCTS WILL MEET THE COUNTY'S REQUIREMENTS OR THAT THE OPERATION OF CONTRACTOR PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE. CONTRACTOR DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF CONTRACTOR PRODUCTS IN TERMS OF THEIR CORRECTNESS, ACCURACY, QUALITY, RELIABILITY, APPROPRIATENESS FOR A PARTICULAR TASK OR APPLICATION, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CONTRACTOR OR CONTRACTOR'S AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES PROVIDED IN THIS AGREEMENT (IF ANY).

Hardware carries the standard manufacturer's warranty only (if any). Contractor will use commercially reasonable efforts to pass through to the County any manufacturer's warranties on Hardware, to the extent such warranties may be passed through. All warranty claims for Hardware will be submitted to the respective manufacturer.

If applicable law affords the County implied warranties, guarantees, or conditions despite these exclusions, those warranties will be

Miami-Dade County, FL

Contract No.

limited to one (1) year and the County's remedies will be limited by this Article 31 - Disclaimer of Other Warranties and Article 32 - Limitations of Liability and Actions to the maximum extent permitted by applicable law. For the avoidance of doubt, the disclaimer set forth in this Article 31 do not negate any of the Contractor's obligations under any certificates which Contractor may be required to maintain by the applicable jurisdiction governing use of the Licensed Software hereunder.

ARTICLE 32. LIMITATIONS OF LIABILITY AND ACTIONS

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS AND COSTS, LOSS OF BUSINESS, LOSS OF SAVINGS, LOSS OF DATA, OR LOSS OF GOODWILL, IN CONNECTION WITH THE PERFORMANCE OF CONTRACTOR PRODUCTS, OR THE PERFORMANCE OF ANY OTHER OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF IT IS AWARE OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL CUMULATIVE LIABILITY OF CONTRACTOR TO THE COUNTY FOR ANY AND ALL CLAIMS AND DAMAGES UNDER THIS AGREEMENT, WHETHER ARISING BY STATUTE, CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE FEES PAID BY THE COUNTY TO CONTRACTOR UNDER THE APPLICABLE ORDER WHICH FORMS THE SUBJECT OF THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

THE LIMITATIONS OF LIABILITY SET FORTH HEREIN SHALL NOT APPLY TO ANY CLAIM OR DAMAGE FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW. IF CUSTOMER'S JURISDICTION DOES NOT ALLOW THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION, THE LIABILITY OF CLEAR BALLOT SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION. THIS ARTICLE 32 SHALL APPLY WITHOUT WAIVER OF THE COUNTYS SOVEREIGN IMMUNITY, IF APPLICABLE.

ARTICLE 33. TERMINATION AND SUSPENSION OF WORK

- 33.1 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 34) and fails to cure said Event of Default (as delineated below in Article 35), or (ii) Contractor attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement.
- 33.2 Intentionally omitted.
- 33.3 If County terminates this Agreement for cause under Article 33.1 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 reasonable attorneys' fees.
- 33.4 The foregoing notwithstanding, if the Contractor 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.
- 33.5 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;

Miami-Dade County, FL

Contract No.

- v. take no action which will increase the amounts payable by the County under this Agreement.; and
 - vi. reimburse the County a proration of the fees paid annually based on the remaining months of the term per the compensation listed in Appendix C.
- a) 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 Professional Services completed in accordance with the Agreement up to the Effective Termination Date;
 - ii. Deliverables delivered before the date of termination, and any other non-cancelable Deliverables;
 - iii. Software License fees and Hardware fees shall be paid in full for all amounts that are committed on the Order or have otherwise accrued hereunder. Software License fees and Hardware fees are not refundable.
- b) In the event the Contractor fails to cure an Event of Default timely, the County may terminate this Agreement.
- 33.6 If County fails to observe or perform any material obligation under this Agreement, Contractor may give written notice to County specifying the material failure. If the material failure is not corrected or a mutually agreed plan to correct the failure has not been established by the parties working together in good faith within thirty (30) Days after the date of such notice, Contractor may terminate this Agreement upon written notice to County.
- 33.7 Upon the expiration or termination of this Agreement for any reason, the license and all other rights granted to County hereunder shall immediately cease, and County shall (i) return the Licensed Software to Contractor together with all reproductions and modifications of the Licensed Software and all copies of any Documentation, notes and other materials respecting the Contractor Products, (ii) attest that County shall no longer use or allow to be used the Contractor Products, (iii) provide Contractor a written certification that County has ceased all use of the Contractor Products and has complied with all of its obligations under this Section. Except as expressly provided herein, to the maximum extent permitted by applicable law, termination of this Agreement by either party will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such party.
- 33.8 Following expiration, or any earlier termination of the term and provided that the term shall not have been terminated by Contractor for cause: (i) Contractor will not for the first **60 days** following such expiration or earlier termination, take any action to intentionally erase or delete any County data then stored on the Licensed Software under or with respect to County's subscription; and (ii) provided the County shall have paid to Contractor all fees, charges and other amounts due and payable under this Agreement, Contractor will following its receipt during such 60 day period of the County's written request, either (A) during said 60-day period forward to the County a thumb drive containing a copy of all County data then stored on the Licensed Software under the County's account, in CSV text format or in any other such other format as the Parties may mutually agree upon in writing; or (B) make CSV text files of County data then stored on the Licensed Software, under the County's subscription available to the County during the aforesaid 60-day period for export or download from such file transfer protocol site as may be provided by or through Contractor for such purpose. Following termination of the term by Contractor, or delivery of the copy of County data to the County as neither Contractor nor any of its third party contractors or licensors will have any obligation to continue to store, maintain or otherwise process any County data then remaining on the Licensed Software in connection with County's subscriptions or any sub-Account thereunder, and may erase, delete or destroy any and all such County data whether by removing pointers to such files or data on any Host Server, overwriting or otherwise. For the avoidance of doubt and notwithstanding anything to the contrary in this subsection (b), Contractor shall at all times comply with Article 54, Public Records and Contracts for Services Performed on Behalf of Miami-Dade County, and any applicable laws, as it relates to retaining public records as part of the Agreement.

ARTICLE 34. EVENT OF DEFAULT

- 34.1 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;

Miami-Dade County, FL

Contract No.

- iii. the Contractor has failed to make prompt payment to Subcontractors or suppliers for any Services;
- iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
- v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
- vi. the Contractor has failed to provide "adequate assurances" as required under subsection b below;
- vii. the Contractor has failed in the representation of any warranties stated herein; or
- viii. the Contractor fails to comply with Article 50 - County User Access Program (UAP)

34.2 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. 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.

ARTICLE 35. 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 a thirty (30) day period, 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 36. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default by Contractor occurs that is not cured pursuant to Article 35, Notice Of Default - Opportunity to Cure, the County may terminate this Agreement and receive a refund of unused prepaid fees.

ARTICLE 37. PATENT AND COPYRIGHT INDEMNIFICATION

37.1 The Contractor shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third-party proprietary rights in the performance of the Work. The sole and exclusive remedy for breach of this provision is Contractor's indemnification obligation under Article 18.

37.2 The Contractor warrants that all Deliverables furnished hereunder, including but not limited to equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights. The sole and exclusive remedy for breach of this provision is Contractor's indemnification obligation under Article 18.

37.3 Intentionally omitted.

37.4 Intentionally omitted.

37.5 The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or Subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary

Miami-Dade County, FL

Contract No.

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 38. CONFIDENTIALITY

- 39.1 All County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, Subcontractors, or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County.
- 39.2 The Contractor shall advise each of its employees, agents, Subcontractors, and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or Subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- 39.3 In the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, Subcontractors, or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.
- 39.4 All information that has been appropriately marked by Contractor as "Confidential" or "Proprietary/Trade Secret" shall be considered Confidential or Trade Secret Information, as defined under Florida law, and shall be subject to all the protections against improper disclosure that such information is provided under Florida law. Neither the County nor its employees, agents, subcontractors, or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential or Trade Secret Information without the prior written consent of the Contractor. For the avoidance of doubt, the Licensed Software, as that term is defined in this Contract, is designated by Contractor as Trade Secret Information and shall be provided with the protections afforded such information under Florida Law. In addition, County shall not be required to treat as confidential or trade secret any information that is subject to Public Records Law (as defined below), provided that the County shall notify Contractor of any such request and afford Contractor the opportunity to claim exempted information as an exemption under Public Records Law.

ARTICLE 40. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of the public records laws of the State of Florida (the "Public Records Law").

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

During the term of the Contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used, or is using, is holding for use, or which are otherwise in the possession of the County (the "Computer Software"). All third-party license agreements must also be honored by the Contractor and its employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the

Miami-Dade County, FL

Contract No.

contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers, and all information technology software.

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

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

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

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

ARTICLE 41. PROPRIETARY RIGHTS

41.1 The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, Subcontractors and suppliers may use only in connection with the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, Subcontractors, or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.

41.2 Intentionally omitted.

41.3 Intentionally omitted.

41.4 Except as otherwise provided in subsections 41.1 above, or elsewhere herein, the Contractor and its Subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder.

ARTICLE 42. VENDOR REGISTRATION/CONFLICT OF INTEREST

42.1 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**

Miami-Dade County, FL

Contract No.

- **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:

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Miami-Dade County Ownership Disclosure Affidavit
(Section 2-8.1 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) 3. Miami-Dade County Employment Drug-free Workplace Certification
(Section 2-8.1.2(b) 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) 5. Miami-Dade County Debarment Disclosure Affidavit
(Section 10.38 of the Code of Miami-Dade County) 6. Miami-Dade County Vendor Obligation to County 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) 8. Miami-Dade County Family Leave Affidavit
(Article V of Chapter 11 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) | <ol style="list-style-type: none"> 10. Miami-Dade County Domestic Leave and Reporting Affidavit
(Article VIII, Section 11A-60 - 11A-67 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) 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. |
|--|---|

42.1 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 43. 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. To the extent permitted by applicable law, any such IPSIG services shall occur not more than once annually. 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, FL

Contract No.

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 44. FEDERAL, STATE, AND LOCAL COMPLIANCE REQUIREMENTS

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

Miami-Dade County, FL
2).

Contract No.

- 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 45. 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

Miami-Dade County, FL

Contract No.

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 46. CONFLICT OF INTEREST

The Contractor represents that:

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

ARTICLE 47. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

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

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

Miami-Dade County, FL

Contract No.

ARTICLE 48. 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 49. 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 50. 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 34 of this Contract.

ARTICLE 51. INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES AND FORMER MEMBERS, OFFICERS OR EMPLOYEES

No member, officer, or employee of the County, no member of the governing body of the locality in which the Project is situated, no member of the governing body in which the County was activated, and no other public official of such locality or localities who exercises

Miami-Dade County, FL

Contract No.

any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.

ARTICLE 52. LIENS

The Contractor is prohibited from placing a lien on County property. This prohibition shall apply to all Subcontractors.

ARTICLE 53. 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 54. 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 (provided that such records are in a standard format possessed by the Contractor and not a derivative thereof), 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 55. 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 56. FORCE MAJUERE

Miami-Dade County, FL

Contract No.

Performance by each party shall be pursued with commercially reasonable efforts in all requirements under this Agreement; however, except as otherwise expressly provided herein, neither party shall be liable to the other for any loss or damage for delay due to causes that (i) were beyond the reasonable control and (ii) were not caused by the negligence or lack of commercially reasonable efforts of the affected party or its subcontractors or suppliers. The parties agree that, provided the conditions stated in (i) and (ii) above apply, the following are causes or events of force majeure: acts of civil or military authority (including courts and regulatory agencies), acts of God (excluding normal or seasonal weather conditions), riot or insurrection, inability to obtain required permits or licenses, blockades, embargoes, sabotage, epidemics and unusually severe floods. The party affected shall provide written notice to the other party indicating the nature, cause, date of commencement thereof, the anticipated extent of such delay and whether it is anticipated that any completion or delivery dates will be affected thereby, and shall exercise due diligence to mitigate the effect of the delay.

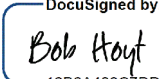
ARTICLE 57. SURVIVAL

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: 
DocuSigned by:
12B6A489C7DD4D2...
 Name: Bob Hoyt
 Title: CEO
 Date: 5/12/2022
 Attest: _____
 Corporate Secretary/Notary Public

By: _____
 Name: Daniella Levine Cava
 Title: Mayor
 Date: _____
 Attest: _____
 Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form
and legal sufficiency

 Assistant County Attorney

Miami-Dade County, FL

Contract No.

APPENDIX A – STATEMENT OF WORK

This Statement of Work (SOW) details the effort necessary for Contractor to install, configure, train, implement and test for productive use, the Contractor Products identified in the Product Schedule set forth in the Order in accordance with the functional and technical requirements as stated herein.

1.0 INTRODUCTION**1.1 Scope of Work**

The scope of work to be delivered is to implement all components of Contractor's ClearAudit system identified in Appendix C, which includes:

- Contractor staff will provide the Hardware and Licensed Software specified in the Order which the County may use to digitally scan, tabulate and adjudicate paper ballots, as well as provide tabulation reports.
- Training will be provided to the designated Authorized Users within the Customer's organization. Training will be provided on the setup, operation and maintenance of each component. If project management is expressly provided as part of this SOW, all project tasks, schedules, deliverables, resources and milestones will be identified in the Project Plan.

1.2 Location

All Contractor Products identified in the Order will be delivered to the named person and address noted below:

Christina White
Miami-Dade County Supervisor of Elections Office
2700 NW 87th Avenue
Doral, FL 33172

All Hardware will be inspected upon delivery by Contractor representatives at the location noted above. All User Acceptance Testing (UAT) of said Hardware will be performed by the County at the location noted above within 10 days of installation. User Acceptance Testing will be deemed to be complete upon receipt, inspection and set-up of equipment followed by the successful scanning of target card and representative ballot, per the Contractor's instruction. Unless stated in writing by the County, all accepted Hardware will be stored and staged for use at the location noted above. Onsite Training of the County's Authorized Users will occur at the location set forth above, or another site designated by the County within the Designated Jurisdiction.

2.0 ROLE BASED TRAINING

Role based training, including training materials, will be provided "just-in-time" to the County's Authorized Users assigned to use the Contractor Products. Onsite instructor-led and hands-on training will be provided initially. Training classes will include practical lab assignments and other hands-on exercises for optimal learning and retention. Subsequent remote instructor-led training is available for refresh training. Online videos will be made available for 24x7 access and self-learning. All training includes an overview of the Licensed Software, hands-on exercises, best practices and quick start guides that can be referenced following training.

COURSE NAME	DURATION	MAX # OF ATTENDEES	OBJECTIVE
ClearAudit	4 hours	10	Learn how to use ClearAudit to administer your audit and recount securely. Use Target Cards to scan batches of ballots then produce scanner and Precinct reports. Best practices including how to backup election and ballot images and restore election and ballot images.

Miami-Dade County, FL

Contract No.

All training will be completed in-person for the first audit and will be repeated remotely upon request of the County thereafter. Additional on-site training may be requested for a fee.

3.0 PROJECT TEAM RESPONSIBILITIES

The successful completion of this project requires teamwork and collaboration between Contractor and the County. High level project responsibilities are broken down as follows. A more detailed project plan will be developed and continually updated and will include more detailed tasks and ownership.

3.1 Contractor and Jurisdiction Mutual Responsibilities:

- At Project Initiation:
 - Agree on project plan
 - Identify Stakeholders and agree on communication plan
- Assignment of project tasks and responsibilities to their respective project team members
- Participation in project meetings, as necessary

3.2 Contractor Responsibilities:

- Procure and ship all Hardware and Licensed Software per Product Schedule
- Contractor Project Manager will:
 - Be the first point of contact for the County for the duration of the project
 - Develop, maintain, and distribute the project plan and schedule based on project definition
 - Lead recurring project team meetings
 - Develop the communication plan and provide status reports to Customer
 - Manage issue tracking, risk mitigation and resolution
 - Manage scope to remain within Master Service Agreement parameters
 - Drive the project to a successful close
 - Deliver and review payment invoices
- Provide a Ballot Definition File to facilitate testing and scanning before every election
- Install and configure all Hardware and Licensed Software included in the Product Schedule onsite
- Stage Contractor Products included in the Product Schedule for the County acceptance testing.
- Deliver all product documentation, architecture, technical specifications

3.3 County Responsibilities:

- Assign appropriate personnel required
- Provide Contractor with:
 - All ballot PDFs (separate files preferred) and ballot to precinct assignments (at least 30 days prior to the election)
 - If ExpressVotes are in use, the BOD Manifest.zip to include individual ballots PDFs, BODManifest.xml, BODManifest.xml.asc and other associated text, BIN and ASC files as part of the export from ElectionWare
 - A list of candidates, contest, party affiliation names, and vote rules associated with ballot artwork
 - An election results report before any ballots are cast (aka a zero report)
 - A PDF test deck file with expected results
 - Mapping of which ballot styles are used in which jurisdiction subdivisions (i.e., precincts or districts)
 - EL30a file or similar XML results file with final precinct level results to use with ClearAudit software to generate a Comparison Results File report
 - Perform acceptance testing on Contractor Products

APPENDIX B – SERVICE LEVEL AGREEMENT**Mission**

It is the mission of the Contractor is to provide exceptional support for our products and maintain the highest levels of customer trust and satisfaction as a part of the partnership established in selecting Contractor's election technology.

Overview

The purpose of this Service Level Agreement is to outline the agreed-upon services to be provided to the County in support of the successful use and operation of the Contractor system and components procured. The Customer Success Team of Contractor is responsible for providing comprehensive support of all software and hardware products purchased under this agreement.

Customer Success Manager

As part of this SLA, a Customer Success Manager ("CSM") will be assigned to the County's account. The CSM will serve as the County's advocate to insure your successful and prolonged use of CBG solutions. The CSM holds annual user group meetings for Contractor customers to exchange knowledge, network with colleagues, and expand their understanding of Contractor solutions. The CSM also coordinates and schedules Contractor upgrades when needed, conducts customer satisfaction surveys and promotes your product change requests to Contractor Product Management for their consideration when planning future Contractor releases.

Helpdesk

The Contractor Helpdesk is in operation Monday through Friday from 8:00AM until 5:30 PM ET. The County may contact the Helpdesk at (857) 250-4961 or submit email requests to support@clearballot.com. Requests for technical support via telephone are handled on a first-in, first-respond basis, however callers may leave a message and all messages will be responded to by telephone within 24 hours. Requests via email will typically be responded to in the same day, and always within 24 hours. Customers requiring immediate assistance or response outside of these hours may contact their CSM with issues and concerns, who will facilitate the proper response.

During Normal Election Cycles, defined herein as the period starting two weeks before scheduled State or Federal Election Days until five days after Election Day, the Helpdesk will operate from 7:00AM until 11:00PM in the Customer's time zone. Contractor's service level for response time during Elections Cycles is 2 hours. Extended technical support during Election Cycles is available at no additional cost at the customer's request. Contact the County's CSM to establish times and availability of support personnel to assist you during your election cycle.

Online Support

Contractor offers several online resources for provision of online Customer Support. Our Helpdesk is a secure web portal that provides customers the ability to submit issues, research past issues, find solutions and identify best practices. Technical information on our products is available via our Support Portal on demand. This portal is accessible at <https://clearballot.com/support>.

Contractor's Customer Success Organization works closely with our training and documentation staff to ensure that all materials are accurate, comprehensive, and up to date. If support on a procedural or non-proprietary matter is required, Contractor's Customer Success Representative may arrange a web conference or demonstration to assist in the resolution of the issue promptly.

Hardware Repairs

Requests for hardware repairs or maintenance, included within this contract, can be initiated via telephone or email, sent to either the County's CSM or the Helpdesk. All repair requests and activity will be initiated and tracked by the Contractor Customer Success Team. To provide customers with the highest level of quality service and response, Contractor engages the service teams of each Original Equipment Manufacturer ("OEM") to perform repairs, in accordance with the County's existing warranty program. Repairs for products may be performed at the County's site or at a remote location. Clear Ballot will respond to your request, within the appropriate Service Level response time, with an initial telephone inquiry to provide basic problem-solving techniques and to gain specifics on the nature of the issue. After determination of a need for onsite service during this telephone inquiry, each service unit will respond onsite within 24 hours to facilitate repairs to your equipment. The County shall be responsible for allowing for technician visits at its facility in accordance with the customers warranty. For standard repair service on ClearCast, ClearAccess, and ClearMark units, customers will be required to maintain original packaging for the units in the quantity not to exceed 5% or the County's original Order. The County will repackage the ClearCast, ClearAccess, or ClearMark unit in the original packing and a pickup order will be issued for pickup of the unit(s) and return to the factory for repairs. Upon completion of the repairs, the factory will return ship the unit(s) to the originating address. Hardware returns may be made to Clear Ballot prior to acceptance of the hardware for any reason. A 15% restocking fee may apply.

Software Upgrades

As part of this agreement, Contractor will make certified software upgrades available to all customers of record for use at their discretion. As determined by each customer's protocols for installing software, the software may be provided directly to the County for installation or a request to the Voting System Testing Laboratory ("VSTL") may be initiated by Contractor for a release of a trusted build copy of the software from the lab directly to the customer. Additionally, Contractor will provide hash values to the County for proper authentication of the software installation. At the County's request, Contractor will schedule a technical Specialist at the prevailing rates to arrive onsite to assist or install and test the software upgrade.

Hardware Warranty and Support

The Contractor's hardware warranty program provides assurance that all system hardware is free of all defects on material and workmanship for a period of 12 months. During the warranty period, Contractor will repair or replace, free of charge, any part defective in material or workmanship. The warranty shall be designated to begin uniformly on all units comprising a single order, immediately upon the completion of the County's User Acceptance Testing and acceptance by the County, or at the end of 30 days after completion of delivery, whichever shall occur earlier. All warranty repairs must be performed by Contractor or an authorized Contractor representative.

Contractor's Customer Success Manager will act as the single point of contact for all hardware warranty service requests provided under this agreement. The procedure to initiate warranty repairs is the same as noted above in the section entitled "Hardware Repairs."

Enhanced and Extended Maintenance

During the Warranty period, Contractor, or our OEM partners, will provide one onsite preventive maintenance visit per year as part of our standard maintenance program. Contractor offers enhanced and extended maintenance and support programs tailored to the customer's needs when requested by the customer as part of the original sale. All requests for enhanced or extended maintenance shall be established through the Sales Representative at the time of the sale and at the rates or extended costs determined at that time. This Service Level Agreement and the maintenance stated herein shall serve as the basis for service and support for all products sold by Contractor to the County. All enhanced or extended maintenance provisions shall be appended to this Service Level Agreement as part of the "Service Level Agreement, Additional Provisions" form that will be signed by a designated representative of both the County and Contractor. No Service Level Agreement issued to a Customer as part of a sale shall provide services or support not stated herein without attachment of the signed Service Level Agreement, Additional Provisions form.

Miami-Dade County, FL

Contract No.

APPENDIX C – PAYMENT SCHEDULE**1. Product Schedule**

Item	Quantity	Unit Cost	Total
Hardware			
ClearAudit fi-7900 ScanStation Bundle: <ul style="list-style-type: none"> ScanStation Laptop Ethernet Cable Fujitsu fi-7900 Scan Aid Kit Laptop Stand 	16 Units	\$24,029.00	\$384,464.00
ClearAudit Admin Station Bundle	2 Units	\$2,147.00	\$4,294.00
ClearAudit Server Bundle (Super Optimized – Rack, 24-port)	2 Units	\$61,861.00	\$123,722.00
Licensed Software			
ClearAudit Software	1 Unit	\$421,052.00	\$421,052.00
Professional Services			
Implementation <ul style="list-style-type: none"> Training Installation Equipment shipping Project management 10 days of onsite support 	1 Unit	\$37,833.00	\$37,833.00
PURCHASE PRICE – GROSS			\$971,365.00
Discount			\$(16,597.00)
PURCHASE PRICE – NET			\$954,768.00

Scope of Use: The County is authorized to use Hardware and Licensed Software identified in the table above to digitally scan, tabulate and adjudicate paper ballots, as well as provide tabulation reports.

Designated Jurisdiction: Miami-Dade County, FL

2. Support Services

Support Services fees are due annually, commencing upon the completion of the initial 12 month warranty period. The initial purchase price of the Contractor Products includes 12 months of technical support, Licensed Software maintenance, and Hardware maintenance. After that period, County is required to purchase Support Services for each year that it continues to use the Licensed Software and Hardware. If State Certification Approval has not occurred before the completion of the initial 12 month warranty period, then the first year Support Service fees will be discounted by 25%, an amount of forty-one thousand eight hundred and four dollars (\$41,804.00). This discount is limited to the Support Service fees for 2023 only, however the discount shall be applied on a pro-rata basis over twelve (12) months for the remainder of the 2023 calendar year and into the 2024 calendar year and shall be listed accordingly as a credit on the applicable invoices for 2023 and 2024. Listed below are the annual costs for these Support Services for the initial term of this Contract and all renewal periods identified in the table below. Thereafter, the Support Services fees may increase annually at a rate not to exceed three percent (3%). Support Services fees are due after the conclusion of any warranty period and then annually. If the warranty period is still in effect through any of the years listed below, then County shall only be required to pay the pro-rata amount of that year's Support Services fees where the County is not otherwise under warranty. By way of example, if the warranty period expires on July 31, 2023, then County shall only be required to pay for 42.67% of the Support Services fees listed for 2023 (i.e., \$69,673.33) to obtain Support Services for the remainder of the 2023 calendar year, and such payment shall not be due until the warranty period expires and the County

Miami-Dade County, FL
receives a proper invoice.

Contract No.

Item	Annual Total
Support Services	
2023 Support Services fees	\$167,216.00
2024 Support Services fees	\$172,232.48
2025 Support Services fees	\$177,399.45
2026 Support Services fees	\$182,721.44
2027 Support Services fees	\$188,203.08
2028 Support Services fees	\$193,849.17

3. Professional Services

Professional Services are provided in accordance with the SOW attached hereto as Appendix A.

4. Payment Schedule

As part of this SOW, the County agrees to the following payment terms and milestones. Contractor's Customer Success team will work closely with the County's designated project team to ensure signoff at each phase of this implementation in accordance with this payment schedule.

Phase	Payment Amount
Phase 1 <ul style="list-style-type: none"> Upon hardware delivery and acceptance 	\$763,815.40
Phase 2 <ul style="list-style-type: none"> The earlier of: <ul style="list-style-type: none"> The one year anniversary of the Effective Date of this Agreement State Certification Approval 	\$190,953.60
Grand Total	\$954,768.00

For the avoidance of doubt, hardware delivery and acceptance shall mean that all items listed in the Product Schedule have arrived at the Designated Jurisdiction facility and have been inspected by Contractor representatives, and approved for final acceptance based on Article 11.

5. Optional Products and Services

Clear Ballot Audit Pricing – Miami-Dade County, Florida	
Items	Price
ClearAudit fi-7900 Bundle	\$24,029
ScanAid Kit (fi-7900)	\$230
Scanner Support (fi-7900)	\$2,558
Network Ethernet Cable	\$10
ClearVote Laptop	\$2,147

Miami-Dade County, FL

Contract No.

USB Printer Cable	\$10
ClearAudit fi-7900 Scanner	\$20,460
ClearAudit Admin Station Bundle	\$2,147
Server Bundle (Super-Optimized Rack)	\$61,861
Network Ethernet Cable	\$10
ClearVote Laptop	\$2,148
Desktop Monitor (27")	\$321
Network Switch (26 ports)	\$409
USB Dell Optical Mouse	\$31
USB Printer Cable	\$10
Reports Printer	\$184
USB Portable DVD Burner	\$102
USB External Backup Drive (8TB)	\$256
ScanServer (Super-Optimized Rack)	\$60,358
Services (Per Day)	\$1,738
<i>Prices are subject to change</i>	

Miami-Dade County, FL

Contract No.

ATTACHMENT 1 – DELIVERABLE ACCEPTANCE FORM

HARDWARE DELIVERED AND ACCEPTED

PROJECT: ClearAudit Post-Election Audit Solution

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

DELIVERABLE NAME: Hardware Delivered and Accepted

Deliverable Date: _____

Accepted Unconditionally: Yes / No

Accepted Conditionally: Yes / No

Acceptance Conditions: _____

Not Accepted: _____

Reason: _____

General Comments: _____

Delivered By: _____		
Signature	Name	Date

Accepted By: _____		
Signature	Name	Date