

Date: December 12, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

Amended
Agenda Item No. 8(P)(1)

Resolution No. R-1120-23

Subject: Recommendation for Approval to Award a Non-competitive Legacy Contract for Internet Access Colocation and Managed Router Services

Summary

This item is for the award of a legacy contract for continued access to colocation space to house the County's Enterprise Information Technology Infrastructure, as well as to ensure the most reliable access to the internet for the Information Technology Department (ITD). The contract provides for secure and reliable connections and storage space. This includes, but is not limited to, servers, storage arrays, backup infrastructure, and the supporting network infrastructure.

The colocation and managed router services are needed as the County continues to experience growth in the use of internet resources to provide e-services for operations and to our residents. It continues to be mission critical to have sufficient capacity, secure and reliable connections, and storage space for business operations.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve this request for a non-competitive purchase pursuant to Section 2-8.1(b)(2) of the Miami-Dade County Code and approve award of Legacy Contract No. L7662-2/32, *Internet Access Colocation and Managed Router Services*, to Equinix, Inc. for ITD in the amount of \$1,358,520 for a term of two years. This contract will replace Contract No. L7662-2/22, which was awarded by the Board through Resolution No. R-594-17 for a six-year term.

Background

Contract No. BW7662 was established in January 2011 as a bid waiver. It was awarded as a bid waiver due to the substantial infrastructure investment that was required to extend, install, and connect a fault tolerant connection to the County's fiber optic network "backbone" utilizing diverse physical paths to the Network Access Point (NAP) facility where the colocation space is located for the County's Network and cyber security systems and hardware. NAP services are managed by ITD.

ITD recommends that the replacement contract be awarded as a Legacy Contract due to the risks and cost of relocating the colocation space, which would also require disconnecting the County's Internet connection for an indeterminable amount of time. Internet disruptions will significantly impact County operational services provided through the County's website, www.miamidade.gov, including processing of online e-commerce payments (e-check and Payment Card) for the enterprise (\$1.34 million average daily transactions), including property taxes, fees, and fines. These interruptions would also impact County internet access impacting departments such as Public Safety (Police, Fire, Corrections, and Emergency Management) and Clerk of Courts, as well as other critical infrastructure sectors such as Elections, Water and Sewer, Seaport, Aviation, and Transportation. Internet service interruptions and outages would also impact the County's cybersecurity infrastructure and managed security services, including the Security Operations Center which monitors and alerts on potential cyber incidents through the analysis of anomalous network activity and review of system logs and endpoint telemetry to provide 24x7 visibility, with real time alerting and incident response capabilities.

The NAP-managed internet service provides access to several Tier-1 Internet Service Providers (ISP) providing fault tolerant and resilient internet services through the Equinix managed router service. This service automatically ensures that the County's network infrastructure utilizes ISPs with the greatest available bandwidth. Managed router service provides connection redundancies, ensuring the County's internet connection is stable and reliable. Additionally, direct, dedicated internet connections are provisioned with cloud providers who have a physical presence at the NAP. These services include Microsoft Azure Active Directory and Office365 (ExpressRoute), Amazon Web Services (Direct Connect), and Oracle Cloud Infrastructure (Oracle Fastconnect) providing enterprise PeopleSoft (INFORMS) services for departments. These services enable the County to connect directly to Cloud environments via dedicated, private, high bandwidth connections.

Four firms identified during market research are only able to provide colocation services; however, they are not able to provide managed router services. These firms provide Internet Access and connectivity; however, they would not be able to match Equinix access to Tier-1 ISPs for Managed Router Services: EcdgeConnectX's EDCMIA01, Level 3 Miami, BurstNet's Miami DC1, and Interconnect Miami.

Competition for these services is not practicable at this time because of the unique nature of NAP services. Equinix, Inc. owns and operates the NAP location and provides the County colocation space and internet access services, which are a crucial part of internet services provided to the public and the County. Competitively soliciting for these services is not in the best interest of the County due to the risks associated with migrating these services may result in a significant impact to the County. These risks include relocating the connection services outside of Miami-Dade County and possibly the United States, which puts County data at risk of hacking; not having a backup of County services during any proposed transition, resulting in unplanned internet access outages; and significant downtime, whereas currently the connectivity uptime is 99.999%.

Accordingly, it is in the County's best interest to award this legacy contract pursuant to Section 2-8.1(b)(2) of the County Code to continue purchasing the required services.

Scope

The scope of this item is countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact for the two-year term is \$1,358,520. The current contract is valued at \$5,400,000 for a six-year and six-month term and expires on December 31, 2023. The allocation under the proposed contract (inclusive of initial and optional terms) is lower than the current contract on an annualized basis due to a reduction in anticipated needs for additional equipment or network growth over the next nine years.

Department	Allocation	Funding Source	Contract Manager
ITD	\$1,358,520	Internal Service Funds	Julian Manduley
Total	\$1,358,520		

Track Record/Monitor

Angela Mathews-Tranumn of the Strategic Procurement Department (SPD) is the Procurement Contracting Manager.

Delegated Authority

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

Vendor Recommended for Award

Vendor	Principal Address	Local Address	Number of Employee Residents	Principal
			1) Miami-Dade 2) Percentage*	
Equinix, Inc.	One Lagoon Drive Redwood, CA	None	0	Tara Risser
			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 SPD's Procurement Guidelines to determine contractor responsibility, including verifying corporate status and that there are no performance or compliance issues through various vendor responsibility lists and a keyword internet search. 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 applies.
- The Small Business Enterprise measures and Local Preference do not apply.
- The Living Wage Ordinance does not apply.



Carladenise Edwards
Chief Administrative Officer



MEMORANDUM

(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: December 12, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Amended
Agenda Item No. 8(P)(1)

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

MDC004

Approved _____ Mayor
Veto _____
Override _____

Amended
Agenda Item No. 8(P)(1)
12-12-23

RESOLUTION NO. **R-1120-23**

RESOLUTION APPROVING AWARD OF A LEGACY CONTRACT NO. L7662-2/32 TO EQUINIX, INC. FOR THE PURCHASE OF INTERNET ACCESS, COLOCATION, AND MANAGED ROUTER SERVICES FOR THE INFORMATION TECHNOLOGY DEPARTMENT IN A TOTAL AMOUNT NOT TO EXCEED \$1,358,520.00 FOR A TWO-YEAR TERM; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY CANCELLATION OR EXTENSIONS, PURSUANT TO SECTION 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA AND IMPLEMENTING ORDER 3-38

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying County Mayor's 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 authorizes award of a legacy contract pursuant to section 2-8.1(b)(2) of the County Code to Equinix, Inc. in a total amount not to exceed \$1,358,520.00 for a two-year term for Contract No. L7662-2/32, in substantially the form attached hereto and made a part hereof, for the purchase of internet access, colocation, and managed router services for the Information Technology Department.

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

Section 3. This Board directs the County Mayor or County Mayor's designee to submit a report to this Board within 90 days of the effective date of this resolution and to place the completed report on an agenda of the full Board without committee review pursuant to rule 5.06(j) of the Board's Rules of Procedure. The report shall, at a minimum, include details regarding the current status of the County's efforts to establish a competitive procurement process for these services and whether any other noncompetitive methods of award are contemplated for these services at the conclusion of the two-year term of this contract.

The foregoing resolution was offered by Commissioner **Sen. René García** , who moved its adoption. The motion was seconded by Commissioner **Oliver G. Gilbert, III** and upon being put to a vote, the vote was as follows:

	Oliver G. Gilbert, III, Chairman	aye	
	Anthony Rodríguez, Vice Chairman	aye	
Marleine Bastien	absent	Juan Carlos Bermudez	aye
Kevin Marino Cabrera	aye	Sen. René García	aye
Roberto J. Gonzalez	aye	Keon Hardemon	absent
Danielle Cohen Higgins	aye	Eileen Higgins	aye
Kionne L. McGhee	aye	Raquel A. Regalado	absent
Micky Steinberg	nay		

The Chairperson thereupon declared this resolution duly passed and adopted this 12th day of December, 2023. 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

JUAN FERNANDEZ-BARQUIN, CLERK

By: Basia Pruna
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

MBV

Michael B. Valdes

**OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA**



EQUINIX ORDER

Account Name : Miami Dade County
Account Number : 351074
Order Number : 1-226944260672
Version # : 4

Currency : USD
Order Valid Until : 12-Jan-2024

PREPARED BY:
 Gayle Simpson
 gsimpson@equinix.com

PREPARED FOR:
 Arlene Campbell
 arlene.campbell@miamidade.gov
 (305) 375-5147

Agreement # : 00081065.0
Initial Term (Months) : 24
Non-renewal notice (Days) : 90

17708770239

IBX: MI1								
Address: 50 NE 9th Street, Miami, FL, 33132, United States								
Section C: Product/Element Changes								
Product Code	Product Description	Qty	UoM	Action	Total Charges NRC	Current Price MRC	Amended Price MRC	Effective Date
SPC00001	Private Cage With Circuit Based Power	1	Each	Update	0.00	37,612.00	37,612.00	01-Jan-2024
CC00004	Demarcation Point S/N: 0000-20846386	1	Each	Update	-	0.00	0.00	01-Jan-2024
CC00001	Patch Panel S/N: PP:0000:1141561,PP:0000:1141562	2	Each	Update	0.00	-	-	01-Jan-2024
CAB00001	Cabinet - 5.17 kVA - Closed Cabinet S/N: 0101:4068447,0308:3567028,0306:3567026,0305:3567024,0304:3567022,0303:3567020,0301:3567018,0206:4068468,0205:3566909,0204:3566907,0203:3566905,0201:4068466	12	Each	-	-	0.00	0.00	01-Jan-2024
POW00003	AC Circuit - 208v - 30-amp - Single Phase - Primary S/N: 0201:4274271,0308:4274568,0306:4274572,0308:4274570,0304:4274550,0303:4274542,0201:4274269	7	Each	-	-	5,512.50	5,512.50	01-Jan-2024
POW00003	AC Circuit - 208v - 30-amp - Single Phase - Redundant S/N: 0201:4274273,0308:4274574,0306:4274577,0308:4274578,0304:4274552,0303:4274546,0201:4274275	7	Each	-	-	5,512.50	5,512.50	01-Jan-2024
POW00003	AC Circuit - 208v - 30-amp - Three Phase - Redundant S/N: 0203:4274279	1	Each	-	-	1,176.00	1,176.00	01-Jan-2024
POW00003	AC Circuit - 208v - 30-amp - Three Phase - Primary S/N: 0203:4274277	1	Each	-	-	1,176.00	1,176.00	01-Jan-2024
POW00004	DC Circuit - -48v - 80-amp - Primary S/N: 0301:4330460	1	Each	-	-	644.00	644.00	01-Jan-2024
POW00004	DC Circuit - -48v - 80-amp - Redundant S/N: 0301:4330461	1	Each	-	-	644.00	644.00	01-Jan-2024
POW00003	AC Circuit - 120v - 30-amp - Single Phase - Primary S/N: 0303:4274545,0308:4274564,0306:4274558,0305:4274554	4	Each	-	-	1,052.00	1,052.00	01-Jan-2024
POW00003	AC Circuit - 120v - 30-amp - Single Phase - Redundant S/N: 0303:4274549,0306:4274562,0305:4274556	3	Each	-	-	789.00	789.00	01-Jan-2024
POW00003	AC Circuit - 120v - 20-amp - Single Phase - Primary S/N: 0306:4274561,0308:4274566	2	Each	-	-	406.00	406.00	01-Jan-2024
CAG00001	Cage - 12 Cabinets - Draw Cap 37.21 kVA - PEC Cap- 62.01 PEC	1	PEC	-	-	20,700.00	20,700.00	01-Jan-2024
CC00001	Cross Connect	1	Each	Update	0.00	50.00	128.00	01-Jan-2024
CC00001	Network Cable Connection - UTP - Z-side IBX- MI1 S/N: 10.DS0.071505.0005.10-W	1	Each	Update	-	50.00	128.00	01-Jan-2024
CC00001	Cross Connect	1	Each	Update	0.00	245.00	128.00	01-Jan-2024
CC00001	Network Cable Connection - UTP - Z-side IBX- MI1 S/N: 10.DS0.071505.0006.10-W	1	Each	Update	-	245.00	128.00	01-Jan-2024
CC00001	Cross Connect	1	Each	Update	0.00	245.00	128.00	01-Jan-2024
CC00001	Network Cable Connection - UTP - Z-side IBX- MI1 S/N: 10.DS0.071505.0012.10-W	1	Each	Update	-	245.00	128.00	01-Jan-2024
EC00001	EC - Minimum Bandwidth Commit	1	Each	Update	0.00	8,000.00	2,000.00	01-Jan-2024

EQUINIX ORDER



IBX: MI1								
Address: 50 NE 9th Street, Miami, FL, 33132, United States								
Section C: Product/Element Changes								
Product Code	Product Description	Qty	UoM	Action	Total Charges NRC	Current Price MRC	Amended Price MRC	Effective Date
CC00001	Network Cable Connection - Z-side IBX- MI1 S/N: 21497980,21497979	2	Each	-	-	0.00	0.00	01-Jan-2024
EC00001	Equinix Connect Port - 10G - Dual-Homed - MI1	2	Each	-	-	0.00	0.00	01-Jan-2024
EC00003	Equinix Connect - Minimum Bandwidth Commit - Bandwidth Burst Cap- 10000 Mbps	4000	Mbps	Update	-	8,000.00	2,000.00	01-Jan-2024
CC00001	Cross Connect	1	Each	Update	0.00	50.00	128.00	01-Jan-2024
CC00001	Network Cable Connection - UTP - Z-side IBX- MI1 S/N: 13779748	1	Each	Update	-	50.00	128.00	01-Jan-2024
CC00001	Cross Connect	1	Each	Update	0.00	50.00	128.00	01-Jan-2024
CC00001	Network Cable Connection - UTP - Z-side IBX- MI1 S/N: 13779747	1	Each	Update	-	50.00	128.00	01-Jan-2024
ECX00015	Equinix Fabric Virtual Connection Product	2	Each	Update	0.00	1,800.00	1,000.00	01-Jan-2024
ECX00015	Equinix Fabric Virtual Connection - MI - DC - 1 Gbps - Oracle Cloud Infrastructure -OCI- FastConnect	2	Each	Update	-	1,800.00	1,000.00	01-Jan-2024
ECX00015	Equinix Fabric Virtual Connection Product	2	Each	Update	0.00	550.00	1,000.00	01-Jan-2024
ECX00015	Equinix Fabric Virtual Connection - MI - MI - 2 Gbps - Azure Express Route	2	Each	Update	-	550.00	1,000.00	01-Jan-2024
ECX00015	Equinix Fabric Virtual Connection Product	2	Each	Update	0.00	750.00	1,000.00	01-Jan-2024
ECX00015	Equinix Fabric Virtual Connection - MI - MI - 5 Gbps - AWS Direct Connect - High Capacity	2	Each	Update	-	750.00	1,000.00	01-Jan-2024
ECX00015	Equinix Fabric Virtual Connection Product	1	Each	Update	0.00	900.00	500.00	01-Jan-2024
ECX00015	Equinix Fabric Virtual Connection - MI - LA - 1 Gbps - Oracle Cloud Infrastructure -OCI- FastConnect	1	Each	Update	-	900.00	500.00	01-Jan-2024
ECX00015	Equinix Fabric Virtual Connection Product	1	Each	Update	0.00	900.00	500.00	01-Jan-2024
ECX00015	Equinix Fabric Virtual Connection - MI - LA - 1 Gbps - Oracle Cloud Infrastructure -OCI- FastConnect	1	Each	Update	-	900.00	500.00	01-Jan-2024
PS00004	Configurable Accessories	3	Each	Update	0.00	0.00	0.00	01-Jan-2024
CC00001	Patch Panel S/N: CP:0306:13773230,CP:0000:13863130,CP:0308:13773231	3	Each	Update	0.00	-	-	01-Jan-2024
PS00004	Configurable Accessories	1	Each	Update	0.00	0.00	0.00	01-Jan-2024
CC00001	Patch Panel S/N: CP:0301:13773226,CP:0301:13773229,CP:0301:13773228,CP:0301:13773227	4	Each	Update	0.00	-	-	01-Jan-2024
Section Total					0.00	51,152.00	44,252.00	

IBX: MI1								
Address: 50 NE 9th Street, Miami, FL, 33132, United States								
Section D: Continuing Services								
Product Code	Product Description	Qty	UoM	Unit Pricing		Total Charges		Effective Date
				NRC	MRC	NRC	MRC	
IFC00001	Intra-Facility Cabling Product	12	Each	-	-	0.00	0.00	01-Jan-2024
ECX00001	Equinix Fabric Port	4	Each	-	-	0.00	800.00	01-Jan-2024
CC00001	Network Cable Connection - Z-side IBX- MI1 S/N: 21618096,21618095,21343679,21343678	4	Each	-	-	-	0.00	01-Jan-2024

EQUINIX ORDER



IBX: MI1									
Address: 50 NE 9th Street, Miami, FL, 33132, United States									
Section D: Continuing Services				Unit Pricing		Total Charges		Effective Date	
Product Code	Product Description	Qty	UoM	NRC	MRC	NRC	MRC		
ECX00001	Equinix Fabric Port - 10G	4	Each	-	-	-	0.00	01-Jan-2024	
CC00001	Cross Connect	1	Each	-	-	0.00	350.00	01-Jan-2024	
CC00001	Network Cable Connection - Single-Mode Fiber - Z-side IBX- MI1 S/N: 10.GE.071715.0011.10-W	1	Each	-	-	-	350.00	01-Jan-2024	
CC00001	Cross Connect	1	Each	-	-	0.00	350.00	01-Jan-2024	
CC00001	Network Cable Connection - Single-Mode Fiber - Z-side IBX- MI1 S/N: 10.GE.071715.0012.10-W	1	Each	-	-	-	350.00	01-Jan-2024	
IFC00001	Intra-Facility Cabling Product	4	Each	-	-	0.00	0.00	01-Jan-2024	
EC00001	EC - Minimum Bandwidth Commit	1	Each	-	-	0.00	2,000.00	01-Jan-2024	
CC00001	Network Cable Connection - Z-side IBX- MI1 S/N: 21490988,21490987	2	Each	-	-	-	0.00	01-Jan-2024	
EC00001	Equinix Connect Port - 10G - Dual-Homed - MI1	2	Each	-	-	-	0.00	01-Jan-2024	
EC00003	Equinix Connect - Minimum Bandwidth Commit - Bandwidth Burst Cap- 10000 Mbps	1000	Mbps	-	-	-	2,000.00	01-Jan-2024	
CC00001	Cross Connect	1	Each	-	-	0.00	350.00	01-Jan-2024	
CC00001	Network Cable Connection - Single-Mode Fiber - Z-side IBX- MI1 S/N: 21464893	1	Each	-	-	-	350.00	01-Jan-2024	
PS00004	Configurable Accessories	1	Each	-	-	0.00	0.00	01-Jan-2024	
CC00001	Patch Panel S/N: CP:0101:13466679,CP:0101:13466671	2	Each	-	-	0.00	0.00	01-Jan-2024	
Section Total						-	3,850.00		

Section Total		NRC	MRC
Section C:	Product/Element Changes	0.00	44,252.00
Section D:	Continuing Services	0.00	3,850.00

Grand Total	
Monthly recurring charge:	\$48,102.00
Non-recurring charge:	\$0.00

TERMS AND CONDITIONS

1. INTRODUCTION

This Replacement Order is governed by and incorporated by reference into the applicable Master Country Agreement or other similar agreement between the Parties ("Agreement").

Capitalized terms used but not defined in this Replacement Order shall have the meaning ascribed to them in the Agreement or shall refer to the values listed at the top of this Order.

EQUINIX ORDER



This Replacement Order replaces and supersedes the Order(s) referenced below (including any Online or Phone Orders related to or incorporated by reference into such Order(s)) and will, as applicable, add those new Products detailed in Section A, terminate the Products detailed in Section B and amend the Products detailed in Section C as further detailed above from the Effective Date stated in the relevant Section.

Unless otherwise stated by this Replacement Order, the Products in the Order(s) detailed in Section D remain(s) unchanged.

2. DEFINITIONS

'Effective Date' as used in this Order shall be:

- For Section A: Product Additions, the date stated above on which the addition to the Licensed Space and Services takes effect or, if no such date is stated above, then the date the Licensed Space is provided or the Services are delivered;
 - For Section B: Product Deletions, the date stated above on which the termination of the Licensed Space and Services takes effect;
 - For Section C: Product Changes, the date stated above on which the change to the Licensed Space and Services takes effect;
- or, if no such date is stated above, then the date the Licensed Space is provided or the Services are delivered of this Replacement Order.

'Products' as used in this Order may also be referred to as Licensed Space and Services.

PRODUCT TERMS

Additional terms and conditions applicable to the Products listed above can be found at the following URL: <http://www.equinix.com/resources/product-documents> and are incorporated by reference into this Order.

3. INITIAL TERM & RENEWAL PERIOD

The Initial Term will commence on the Effective Date and will remain in effect for the Initial Term.

After the Initial Term, the term will automatically renew for the Renewal Period unless either Party terminates the Order by providing written Non-renewal notice prior to the end of the then-current term to the other Party in which event this Order will terminate at the end of the then-current term.

4. POWER LIMITATIONS

The maximum amount of electrical power that Customer may draw is stated above as Draw Cap or Qty/UoM in kVA or kW ("Draw Cap"). Customer may not draw more power than the Draw Cap. If Customer exceeds the Draw Cap, Equinix will notify Customer and Customer must reduce power draw to be equal to or less than the Draw Cap within 72 hours (or as otherwise agreed) or Equinix may, in its sole discretion, either charge Customer for the power overage at a maximum of twice the MRC/kVA rate for Licensed Space and power Services above, or suspend Customer's power Services to return to Draw Cap compliance.

5. PRICE AND PRICE INCREASE



Customer will pay the Fees for the Licensed Space and Services from the Effective Date.

Notwithstanding anything in this Order to the contrary, all Fees for those Products in the Price Increase Terms may be subject to the Price Increase with effect from the date stated in the Price Increase Terms and every twelve (12) months thereafter, except where a change in Equinix's direct electrical supply costs exceeds the Price Increase value listed below then Equinix may change the Fees for power Services by such increased cost.

Price Increase Terms	
First Price Increase Applicable After	12 months
All Products Price Increase %	5%

Renewal Price Increase Terms	
All Products Price Increase %	5%

Equinix reserves its right to delay any Effective Date for the Licensed Space and Services under this Order unless Equinix receives a signed copy of this Order before the Effective Date stated above.

Order Reference Updates			
IBX	Product Family	Order Reference #	New Order Reference #
MI1	Space & Power	1275-SO-1021	1-226944260672
MI1	Interconnection	1275-SO-1021,PROJ00047315,1-214756485375,1-214756552092	1-226944260672
MI1	Services		1-226944260672

EQUINIX ORDER



Miami Dade County		Equinix LLC, on behalf of itself and its U.S. Affiliates	
Signature: <i>Lydia Osborne</i> Name: Lydia Osborne Title: Asst. Director Strategic Procurement Department Date: 12/29/2023	Billing Contact Name: Billing Address: 5680 SW 87TH AVE. MIAMI FL United States 33173 Phone Number: Email Address:	Equinix Local Entity Address: One Lagoon Drive, 4th Floor Redwood City CA United States 94065	Signature: Name: Alex Para Title: Commercial Finance Senior Director Date: 21-Dec-2023

Please be aware that Customer is required to provide a valid Purchase Order (PO) at time of signature of this Order. Any delay in providing a PO will affect Equinix's provision of the Products on this Order.

Attest: *Olga Valverde* Deputy Clerk 12-29-23 Olga Valverde – e18183
Clerk of the Board **Juan Fernandez-Barquin, Clerk of the Court**
and Comptroller

Approved as to form
and legal sufficiency

Michael Valdes



INTERNET ACCESS, COLOCATION AND MANAGED ROUTER SERVICES

THIS AGREEMENT ("AGREEMENT") IS MADE AND ENTERED INTO BY AND BETWEEN MIAMI-DADE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, HAVING ITS PRINCIPAL OFFICE AT 111 N.W. 1ST STREET, MIAMI, FLORIDA 33128 (HEREINAFTER REFERRED TO AS THE "COUNTY" OR "CUSTOMER"), AND VERIZON BUSINESS NETWORK SERVICES INC. ON BEHALF OF TERREMARK NORTH AMERICA, INC. , A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF FLORIDA, HAVING ITS PRINCIPAL OFFICE AT 2 SOUTH BISCAYNE BOULEVARD, SUITE 2800, MIAMI, FL 33131 (HEREINAFTER REFERRED TO AS THE "SERVICE PROVIDER" OR "VERIZON" OR "TERREMARK").

RECITALS

WHEREAS, Terremark shall provide the required Colocation Services as required by the County as per the conditions set forth in this Agreement.

WHEREAS, County desires to enter into an agreement with Terremark for the provision of colocation services as further defined in Article 6; and

WHEREAS, the Parties desire to enter into this Agreement for colocation services only specifically to enable an efficient assignment to Equinix, Inc. ("Equinix") of the relevant rights and obligations associated with Terremark's provision of services to County. Such assignment will take place pursuant to Article 11 of this Agreement.

WHEREAS, the rights and obligations of the Parties for services provided hereinafter shall be governed by the terms and conditions of this Agreement; and

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1 The word "**Affiliate**" means an entity controlling, controlled by, or under common control with a party, where control is established by a majority ownership (greater than 50%) in or over an entity.
- 1.2 "**Connection**" means a network connection from Customer's telecommunications equipment to Terremark's telecommunications equipment, which, in turn, are connected to the telecommunications equipment of Terremark's Other Customers.
- 1.3 The words "**Contract**" or "**Contract Documents**" or "**Agreement**" shall mean collectively the terms and conditions and all associated addenda and all other attachments hereto and all amendments issued hereto.
- 1.4 "**Contract Manager**" shall mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.
- 1.5 "**Customer**" "**County**" or "**Licensee**" shall mean Miami-Dade County, or the Information Technology Department requesting Work by submitting a signed and completed Service Order.
- 1.6 "**Equipment Space**" means the place designated by Terremark at which Customer will

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install its equipment.

- 1.7 "ITD" shall mean the Information Technology Department located at 5680 SW 87th Avenue, Miami, FL 33173.
- 1.8 "Internet Access" shall mean the process by which a connection to the global communication network is established through telecommunications equipment, computers, mobile devices, and computer networks.
- 1.9 "Managed and Professional Services" means all managed, professional or value-added services of any kind at any time, and from time to time, offered by Terremark, and applicable Service Level Agreements. Managed and Professional Services do not include Terremark's Exchange Point, colocation and power services, standard non-recurring charges for provisioning Services, or any materials used in provisioning the Services (which will be billed separately, as used, at Terremark's then-current cost for materials plus 30%).
- 1.10 "Managed Router Services" shall mean the combination of several IP Transit connections into a single connection, and/or provided in a redundant configuration, providing greater internet access reliability.
- 1.11 "NAP of the Americas" or "NAP" shall mean the Network Access Point of the Americas located at 50 NE 9th Street, Miami, FL 33132.
- 1.12 "NOC" shall mean the Network Operations Center located at the NAP of the Americas.
- 1.13 "Peering Fabric" means Terremark's network infrastructure whereby Terremark's Other Customers and Customer can reciprocally provide network access to each other.
- 1.13 The words "Project Manager" shall mean the County Mayor or the duly authorized representative designated to manage the Project.
- 1.14 "RFI" means the Request for Information that Terremark sends to Customer after it has executed a Service Order, requesting, among other items: Customer's engineering, network and billing contacts, and the detailed engineering requirements for Customer's deployment.
- 1.15 "RFI Response" means the information Customer submits to Terremark in response to the RFI.
- 1.16 "Service Order or Statement of Work" means the order form that is a part of this Agreement setting out the services that Terremark will provide to Customer, once such order form is signed by Customer and accepted by Terremark.
- 1.19 "SLA" shall mean Terremark's Service Level Agreement.
- 1.20 The words "Scope of Services" shall mean the document appended hereto as Appendix A, which details the work to be performed by Terremark.
- 1.21 The words "Service and Support" shall mean the services and support required for the County to achieve optimal bandwidth performance and to obtain a secure colocation space.
- 1.22 "Terremark" means Terremark Federal Group, a Delaware limited liability company, and

its Affiliates, with its principal place of business at One Biscayne Tower, 2 South Biscayne Blvd., Suite 2800, Miami, FL 33131.

- 1.23 **"Terremark Facility"** means the network access point or data center identified in the Service Order.
- 1.24 **"Terremark's Other Customer"** means any other party who has agreed to the Terremark registration requirements by signing and submitting a completed Service Order, and whom Terremark has registered as a customer of the Terremark Facility.
- 1.25 The words **"Work"**, **"Services"**, **"Program"**, or **"Project"** shall mean all matters and things required to be done by Terremark in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

To the extent there is any conflict between a Service Order, the Service Attachment for Terremark Data Centers and the Agreement, the order of precedence is first (a) the Service Attachment, (b) the Agreement, and (c) Service Order.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- b) Terremark shall provide the services set forth in the Scope of Services attached hereto as Appendix A, ("Scope of Services" or "SOW") and render full and prompt cooperation with the

County in all aspects of the Services performed hereunder.

- c) Terremark acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and Terremark shall perform the same as though they were specifically mentioned, described and delineated.
- d) Terremark shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- e) Terremark acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. Terremark agrees to provide input on policy issues in the form of recommendations, but reserves the right to decline the implementation of any and all changes should they be deemed unreasonable by Terremark. Additionally, Terremark agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County Provided that said mutually agreed upon changes are within the Scope of Services and/or any and all additional costs associated with such changes are borne by the County. Terremark 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. AGREEMENT TERM

The Agreement shall become effective on the date that it is signed by the County or the Contractor ("Effective Date"), whichever is later and shall continue through the last day of the 24th month (the "Term"); provided, however, the terms and conditions set forth herein shall remain in effect and shall continue to govern the delivery of all work under any Service Order or Statement of Work ("SOW") for Services under this Agreement then in effect until completion. The County, at its sole discretion, reserves the right to exercise the option to renew this Agreement for two (2) additional twenty-four month periods by delivering written notice of such renewal to Terremark prior to the expiration of the then current Term.

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

ARTICLE 6. SERVICES TO BE PROVIDED

6.1 Terremark Obligations. During the Term of this Agreement, Terremark shall provide to County the services, resources and deliverables (collectively, the "**Services**") described in, and in accordance with the following: (i) this Agreement; (ii) any Service Attachment document, and (iii) any Service Order or SOW (the documents in clauses (ii) through (iii) being referred to collectively

as the “**Service Documents**”), together with the exhibits, schedules and other attachments to the foregoing. Unless otherwise expressly stated herein, references herein to this Agreement will be deemed to include the relevant Services Documents.

Terremark shall provide the following services set forth in the Scope of Services (Appendix A) as required by the County.

Services include:

- a) Colocation Space, Power, and Cooling

6.2 Telephone and E-mail Support. For the term of this Agreement, Terremark shall provide telephone and e-mail support in the following manner: Queries for specific technical problems and failures are possible at any time. For this purpose, the County will generally leave a message indicating the exact problem description and a classification in the following priority and error levels:

- a) Critical – County impacting, no work around possible
- b) Major – County impacting, work around possible
- c) Minor – Not County impacting County critical business

Terremark’s telephone support contacts are as follows:

Primary Contact:

Name: Service Center
 Phone Number: 305-328-8000
 Email: servicecenter@terremark.com

ARTICLE 7. FEES AND PAYMENT

7.1 Services. The County shall pay for the Services as set forth on Appendix B “Payment Schedule” attached hereto. All amounts payable hereunder by the County shall be payable on a monthly basis in accordance with the fees outlined in Appendix B. The County shall have no obligation to pay Terremark or any additional sum in excess of this amount, except for burst changes and/or modification to the Agreement, which is approved and executed in writing by the County and Terremark. All Services undertaken by Terremark before County’s approval of this Agreement shall be at Terremark’s risk and expense.

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

7.3 Fixed Pricing. Prices shall remain firm and fixed for the term of the Agreement, including any option or extension periods; however, Terremark may offer incentive discounts to the County at

any time during the Agreement term, including any renewal or extension thereof.

7.4 Invoices. Verizon agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by Verizon, which are directly attributable or properly allocable to the Services, the Contractor may bill the County periodically, but not more than once per month, upon invoices provided by the Terremark pursuant to Appendix B – Price Schedule. All invoices shall be taken from the books of account kept by the Terremark, shall be supported by copies of reasonably required documentation by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Terremark. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. Billings from prime Contractors under services and goods contracts with the County or Public Health Trust, that are Small Business Enterprise contract set-aside, bid preference or contain a subcontractor goal, shall be promptly reviewed and payment made by the County or Trust on those amounts not under dispute within fourteen (14) calendar days of receipt of such billing by the County or the Trust pursuant to Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Miami-Dade County Code. This contract does not contain any supplier diversity requirements that Verizon needs to comply with. In the event this changes, this provision would apply. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

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

ITD Finance
Accounts Payables
5680 SW 87th Avenue
Miami, Florida 33173

Attention: Erick Gomez

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

7.5. Payment. If Customer orders any of Services, Customer agrees to pay Terremark's then-prevailing rates for such Services. Customer will pay all recurring fees monthly in advance on the first day of each month during the Term. Unless otherwise specifically set forth in a Service Order, Terremark will not issue an invoice for the non-recurring charges (as defined in the applicable Service Order), which are due and payable immediately upon the execution of the applicable Service Order. Failure to timely remit the non-recurring charges will result in a delay in the delivery of Services to Customer. All other non-recurring charges are due and payable thirty (30) days after the date of invoice.

ARTICLE 8. INSURANCE AND IDEMNIFICATION

8.1 Indemnification: Terremark agrees to defend the County through final judgment or settlement, against all third party claims, actions, or suits against the County for bodily injury, death, or loss of or damage to real or tangible personal property ("Claims"), to the extent that the Claims were proximately caused by any negligent act or omission or willful misconduct of Terremark, its agents or employees. Terremark will indemnify and hold the County harmless from and against all damages, expenses and costs, including reasonable attorneys' fees, finally awarded against the County for such Claims or amounts agreed to by Terremark in settlement of the Claims.

8.1.1 Verizon under Section 8.1 shall be excused from its obligations under the applicable section if the County fails to: (i) provide prompt written notice of the third party claim, action, or suit to Verizon, provided that the failure of the County to provide such notice materially prejudices Verizon's defense and/or settlement of such claim, action, or suit; (ii) cooperate with all reasonable requests of Verizon in connection with the defense and/or settlement of such claim, action or suit, at Verizon's reasonable expense; and/or (iii) surrender exclusive control to Verizon of the defense and/or settlement of such claim, action, or suit.

8.1.2 Verizon shall secure the prior consent of the County before settling any claim, suit, or action that includes an admission of liability by the County or imposes material obligations on the County other than cessation of infringing activity, confidential treatment of the settlement, and/or payment of money that is fully indemnified by Verizon under Section 8.1. The County shall not unreasonably withhold or delay consent.

8.2 Insurance Terremark: Upon County's notification, Terremark shall furnish to the Internal Services Department, Procurement Management Division, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of Terremark as required by Florida Statute 440.
2. Commercial General Liability Insurance in an amount of \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be included as an additional insured as their interests may appear under this Agreement with respect to general liability coverage.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount of \$300,000 combined single limit per accident for bodily injury and property damage.
4. Professional Liability/Errors & Omissions Liability Insurance in an amount of \$1,000,000 per claim and aggregate.

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength 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 members 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 N.W. 1st Street
Suite 1300
Miami, Florida 33128-1974**

Compliance with the foregoing requirements shall not relieve Terremark 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 insurance certificate is received within the specified timeframe but not in the manner prescribed in this Agreement, Terremark shall have an additional five (5) business days to submit a corrected certificate to the County. If Terremark fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, Terremark 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.

Terremark shall assure that the Certificates 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(s) of Insurance is scheduled to expire during the term of the Contract, the successful Bidder shall submit new or renewed Certificate(s) of Insurance to the County a minimum of ten (10) calendar days of the expiration. In the event that expired Certificates of Insurance are not replaced or renewed to cover the Contract period, the County may suspend the Contract until the new or renewed certificates 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.

ARTICLE 9: LIMITATION OF LIABILITY

1. EXCEPT WITH RESPECT TO LIABILITY UNDER ARTICLE 7. (FEES AND PAYMENT), IN NO EVENT WILL EITHER PARTY OR THEIR SUPPLIERS BE LIABLE FOR DAMAGES OR LOSSES THAT EXCEED, IN THE AGGREGATE, THE AMOUNT OF FEES PAID FOR SERVICES THAT GAVE RISE TO SUCH DAMAGES OR LOSSES IN THE SIXTY (60) DAY PERIOD PRIOR TO THE DATE ON WHICH THE EVENT GIVING RISE TO SUCH DAMAGES OR LOSSES OCCURRED.

2. IN NO EVENT WILL EITHER COUNTY NOR TERREMARK WILL WE BE LIABLE, ONE TO

THE OTHER, FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT.

3. County will not hold Terremark liable for any loss whatsoever resulting from Terremark's other Customers' unlawful activities or use that does not conform to the terms of this Agreement and the Requirements.

ARTICLE 10. NOTICES

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

(1) To the County Project Manager:

Miami-Dade County
Information Technology Department
5680 SW 87th Avenue
Miami, FL 33173

Attention: Julian Manduley
Phone: (305) 596-8610
E-mail: julian.manduley@miamidade.gov

and to the Contract Manager:

Miami-Dade County
Department of Procurement Management
111 N.W. 1st Street, Suite 1300
Miami, FL 33128-1974

Attention: Brad Skinner
Phone: (305) 375-1075
Fax: (305) 375-5688
E-mail: brads@miamidade.gov

(2) To Terremark

Terremark North America, Inc.
One Biscayne Tower
2 S. Biscayne Blvd, Ste. 2800
Miami, FL 33131

Attention: Legal Department
Phone: (305) 961-3200
Email: contracts@terremark.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 11. NONASSIGNABILITY

Except as expressly set forth in this Article 11, Terremark shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County. The Parties acknowledge and agree that this Agreement is being entered into with the intention of Terremark assigning this Agreement to Equinix pursuant to the purchase by Equinix of those certain data center facilities that Terremark will utilize to provide the Services hereunder. The Parties acknowledge and agree that such assignment by Terremark to Equinix will occur upon the closing of the aforementioned data center facility sale to Equinix, which is anticipated to occur around May 1, 2017, and without the need for Terremark to obtain any additional consents, approvals or authorizations from County or Customers, except as set forth in Article 15.

ARTICLE 12. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, Terremark 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 Terremark's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to Terremark, 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 Terremark in connection with this Agreement. The terms of this Article shall not impose any liability on the County by Terremark or any third party.

Miami-Dade County Inspector General Review

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

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the

Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-38 ; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Inspector General Powers.

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General shall have the power 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 Terremark, 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 Terremark from the Inspector General or IPSIG retained by the Inspector General, Terremark 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 Terremark'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 13. GOVERNING LAW

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

ARTICLE 14. COUNTY USER ACCESS PROGRAM (UAP)

a) User Access Fee

Pursuant to Section 2-8.10 of the Miami-Dade County Code, this Agreement is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Agreement, or any contract resulting from the solicitation referenced on the first page of this Agreement, and the utilization of the County Agreement price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all

Agreement usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

Terremark providing goods or services under this Agreement 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. Terremark 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 Agreement pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. Terremark must obtain the participation number from the entity prior to filling any order placed pursuant to this Section. Terremark participation in this joint purchase portion of the UAP, however, is voluntary. Terremark shall notify the ordering entity, in writing, within three (3) business days of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, Terremark 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 Terremark 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 Terremark and shall be paid by the ordering entity less the 2% UAP.

c) Terremark Compliance

If Terremark fails to comply with this Article, Terremark may be considered in default by the County in accordance with Article 28 this Contract.

ARTICLE 15. VENDOR REGISTRATION AND FORMS/CONFLICT OF INTEREST

a) Vendor Registration

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

- | | |
|--|---|
| 1. <i>Miami-Dade County Ownership Disclosure Affidavit</i>
(Section 2-8.1 of the County Code) | 4. <i>Miami-Dade Disability and Nondiscrimination Affidavit</i>
(Section 2-8.1.5 of the County Code) |
| 2. <i>Miami-Dade County Employment Disclosure Affidavit</i>
(Section 2-8.1(d)(2) of the County Code) | 5. <i>Miami-Dade County Debarment Disclosure Affidavit</i>
(Section 10.38 of the County Code) |
| 3. <i>Miami-Dade Employment Drug-free Workplace Certification</i>
(Section 2-8.1.2(b) of the County Code) | 6. <i>Miami-Dade County Vendor Obligation to County Affidavit</i> |

(Section 2-8.1 of the County Code)

7. **Miami-Dade County Code of Business Ethics Affidavit**
(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)
8. **Miami-Dade County Family Leave Affidavit**
(Article V of Chapter 11 of the County Code)
9. **Miami-Dade County Living Wage Affidavit**
(Section 2-8.9 of the County Code)
10. **Miami-Dade County Domestic Leave and Reporting Affidavit**
(Article 8, Section 11A-60 11A-67 of the County Code)
11. **Subcontracting Practices**
(Ordinance 97-35)
12. **Miami-Dade County E-Verify Affidavit**
(Executive Order 11-116)
13. **Subcontractor /Supplier Listing**
(Section 2-8.8 of the County Code)
14. **Environmentally Acceptable Packaging**
(Resolution R-738-92)
15. **W-9 and 8109 Forms**
(as required by the Internal Revenue Service)
16. **FEIN Number or Social Security Number**

In order to establish a file, Terremark's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Terremark'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
- To make payments to individual/Terremark for goods and services provided to Miami-Dade County
- Tax reporting purposes
- To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

17. **Office of the Inspector General**
(Section 2-1076 of the County Code)

18. **Small Business Enterprises**
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

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

b) Conflict of Interest/Code of Ethics

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, 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 Miami-Dade County Code relating to Conflict of Interest and Code of Ethics. In accordance with 2-11.1 (y), the Miami Dade County Commission on Ethics and Public Trust (Ethics Commission) 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 16. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The Contractor shall comply with the Public Records Laws of the State of Florida, 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, F.S., or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

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

A. Treatment of Exemptions to Public Records Requests

The parties agree that Customer as a public entity, is subject to the Freedom of Information Action contained in Florida's Statutes Chapter 119 (the "FOI Act"). All public records in the

Customer's possession, as defined in the FOI Act, will be disclosed in accordance with the FOI Act. The Customer recognizes that certain records may be shielded from disclosure if the record qualifies for an exemption contained in FOI Act. Verizon may request that the Customer refrain from disclosing certain records by clearly identifying the exempt information within the record to the exclusion of non-exempt information. Verizon shall list the exemption that it believes to be applicable along with an explanation of why it believes the exemption applies. If the Customer does not agree that the exemption identified is applicable, the Customer shall request that Verizon revise its request. In the event that an agreement on the applicability of an exemption can't be reached, Verizon may request that its record be returned

All Verizon documents now or later comprising the Agreement may be released in their entirety under the Florida Freedom of Information Act, and Verizon agrees that any confidentiality or similar stamps or legends that are attached to any future documents or information may be ignored to the extent they claim confidentiality beyond that permitted herein.

B. Return or Destruction

Upon the termination or expiration of this Agreement or upon the earlier request of the disclosing Customer or Eligible Organization, Supplier shall (a) at its own expense, promptly return to the disclosing Customer or Eligible Organization all tangible Confidential Information (and all copies thereof, except to the extent any record is required by law to be retained) of the disclosing Customer or Eligible Organization, or (bi) upon written request from the disclosing Customer or Eligible Organization, destroy such Confidential Information and provide the disclosing Customer or Eligible Organization with written certification of such destruction, and (c) cease all further use of the Customer or Eligible Organization's Confidential Information, whether in tangible or intangible form.

Customer or the Eligible Organization shall retain and dispose of Verizon's Confidential Information in accordance with the State of Florida's records retention policies.

C. Unanticipated Costs Related County Public Records

In the event the Customer requires that any public record which may be maintained by Verizon in accordance with the provisions of this Article 16 be produced or returned to Customer in a format other than the format originally provided to Verizon, Verizon shall be entitled to reasonable compensation from Customer for any and all costs associated with the conversion of such public record to the requested format.

ARTICLE 17. ANNUAL APPROPRIATION

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

ARTICLE 18. 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.

If any of this Agreement shall be held by a court of competent to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect.

ARTICLE 19. MANNER OF PERFORMANCE

- a. Terremark warrants that it will perform the Services described herein in a good and workmanlike manner in accordance with accepted industry standards. Further, Terremark warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner. Except for the express warranties herein Terremark makes no other warranties express or implied, including the implied warranties of merchantability and fitness for a particular purpose, title, or otherwise.
- b. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by Terremark in all aspects of the Services. Customer may request replacement of Terremark Personnel (to the extent permitted by law and applicable agreements) based on the actual misconduct or failure in performance of this Agreement by such personnel by providing notice to the Service Provider Account Manager or to a Terremark Executive. Promptly after its receipt of such a request from Customer, Terremark shall investigate the matters stated in the request and discuss with Customer its findings and the appropriate action to take in such case. If Customer does not agree with the actions Terremark proposes to take in the matter, Customer may escalate the matter to a Terremark Executive. Customer may at any time, including during the pendency of Verizon's investigation of a Customer complaint or escalation of a disagreement on how to resolve a personnel issue, deny access to its sites and facilities to the personnel in question. In such case, Verizon agrees to use reasonable efforts to provide substitute personnel until the matter is resolved.
- c. Terremark agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made.
- d. Terremark shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- e. Terremark 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 TERREMARK

All employees of Terremark shall be considered to be, at all times, employees of Terremark under its sole direction and not employees or agents of the County. Terremark shall supply competent employees. Miami-Dade County may require Terremark 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

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

Terremark 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. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

a) Terremark hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of Terremark's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses. Notwithstanding the foregoing, the Parties agree that any claims relating to indemnification and equitable relief will not be subject to this provision.

b) Terremark shall be bound by all determinations or orders and shall promptly comply with every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether Terremark agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.

c) Terremark must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that Terremark and the Project Manager are unable to resolve their difference, Terremark may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.

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

ARTICLE 23. MUTUAL OBLIGATIONS

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

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

c) In those situations where this Agreement imposes an indemnity obligation on

Terremark, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if Terremark fails to diligently defend such claims, and thereafter seek indemnity for costs from Terremark.

ARTICLE 24. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

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

ARTICLE 25. AUDITS

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

Pursuant to Section 2-481 of the Miami-Dade County Code, Terremark 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. Terremark 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. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

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

ARTICLE 27. TERMINATION AND SUSPENSION OF WORK

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

b) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County under this Agreement through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. Terremark may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

c) In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by thirty (30) day prior written notice to Terremark, provided that any such termination is subject to County's payment of termination liability as set forth in Section B.6 and Section B.7 of Attachment

A.

d) In the event that the County exercises its right to terminate this Agreement under Article 28, Terremark shall, upon receipt of such notice, unless otherwise directed by the County:

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

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

iii. cancel orders;

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

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

vi. In the event that the County exercises its right to terminate this Agreement, SOW or any Service Order hereunder, Terremark will be compensated as stated in the Section B.6 Termination of Service Order for any service orders and Article 7 (Fees and Payment). Fees and Payment herein for the portion of the Services completed in accordance with the Agreement, or any SOW or Service Order hereunder up to the Effective Termination Date; and non-cancelable Deliverables that are not capable of use except in the performance of this Agreement, but not incorporated in the Services.

e) All compensation pursuant to this Article is subject to audit.

ARTICLE 28. EVENT OF DEFAULT

a) An Event of Default shall mean a breach of this Agreement by Terremark. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:

i. Terremark has not delivered Deliverables on a timely basis, provided that County has satisfied its payment obligations under this Agreement in a timely manner.

ii. Terremark has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;

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

iv. Terremark has failed to obtain the approval of the County where required by this Agreement;

v. Terremark has failed to provide "adequate assurances" as required under subsection "b" below;

vi. Terremark has materially failed in the performance of any warranties stated herein.

b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to Terremark's ability to perform the Services or any portion thereof, the County may request that Terremark, within the time frame set forth in the County's request, provide adequate

assurances to the County, in writing, of Terremark's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by Terremark for portions of the Services which Terremark has not performed. In the event that Terremark fails to provide to the County the requested assurances within the prescribed time frame, the County may:

- i. treat such failure as a repudiation of this Agreement;
- ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 29. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION

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

29.2 Notwithstanding the terms set forth in Articles 27 or 28 , this Agreement may be terminated by the non-defaulting party if any of the following events of default occur: (1) if either party materially fails to perform or comply with the Agreement or any provision hereof; (2) if either party fails to strictly comply with the provisions of Article 31 (Confidentiality) or makes an assignment in violation of Article 11 (Nonassignability); (3) if Terremark becomes insolvent or bankrupt, or makes an assignment for the benefit of creditors.

29.3 Effective Date of Termination. Termination due to a material breach shall be effective on notice. In all other cases, termination shall be effective thirty (30) days after notice of termination to the defaulting party if the defaults have not been cured within such thirty (30) day period.

ARTICLE 30. CONFIDENTIALITY

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

b) The Contractor shall advise each of its employees, agents, subcontractors and

suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.

c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 31. STATEMENT OF WORK

Prior to the commencement of any additional Services outside of the Scope of Services as attached in Appendix A, the County and Terremark shall mutually agree upon the terms and conditions required to complete a SOW for the specific Services to be performed. Each SOW executed hereunder shall automatically incorporate the terms and conditions of this Agreement.

ARTICLE 32. EXTENSION OF TIME

a. If Terremark is delayed at any time hereunder due to any of the following then the affected schedule or the required performance of Work may be extended by the County in the reasonable exercise of its discretion for such reasonable time as the County may determine, subject to the following conditions:

- i. The cause of the delay is beyond Terremark's control and arises without its fault or negligence, and arises after the execution hereof and neither was nor could have been anticipated by Terremark by reasonable investigation; and
- ii. The completion of the Work will be actually and necessarily delayed by the causes set forth in "i" above; and
- iii. The effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures whether before or after the occurrence of the cause of delay; and
- iv. Terremark has provided a written request and other information to the County, as described in subsection (d) below, within ten (10) days after the time Terremark knows or reasonably should have known of any cause which might result in a delay for which Terremark may request an extension of time. Terremark shall specifically state in such notice that an extension is or may be requested and identify the cause of the delay, describing the nature and its effect on the completion of the affected portions of the Work identified in the notice. If Terremark shall fail to give the foregoing notice, the right to request an extension for such cause shall be waived. All of the conditions of this subsection (a) must be met in order to be deemed an Excusable Delay.

b. All references in this Article to Terremark shall be deemed to include subcontractors and suppliers, all of whom shall be considered as agents of Terremark.

- c. The period of any extension of time shall be only that which is necessary to make up the time actually lost. The County reserves the right to rescind or shorten any extension previously granted if the County subsequently determines that any information provided by Terremark in support of its request for an extension of time was erroneous or that there has been a material change in the facts stated.
- d. The County may require Terremark to furnish such additional information or documentation, as the County shall reasonably deem necessary or helpful in considering a extension request. Terremark understands an extension of time will not be granted unless Terremark affirmatively demonstrates to the County's reasonable satisfaction that the circumstances shown justify such extension.
- e. Within thirty (30) days of its receipt of all information and documentation as may be required by the County, the County shall advise Terremark of its decision on such requested extension. Notwithstanding the foregoing, where it is not reasonably practicable for the County to render its decision within such thirty (30) day period, it shall, prior to the expiration of such period, advise Terremark that it will require additional time and the approximate date upon which it expects to render such decision.
- f. Since the granting of an extension of time may materially alter the scheduling plans and other actions of the County and since, with sufficient notice, the County might, if it should so elect, attempt to mitigate the effect of the delay for which an extension of time might be claimed, and since mere oral notice may cause a dispute as to the existence or substance thereof, the giving of written notice as required in subsection (a.) (iv.) above shall be a condition precedent to Terremark's rights hereunder.
- g. Should any person seek a restraining order, preliminary injunction or an injunction, of which Terremark becomes aware, which may delay the Services, Terremark shall promptly give the County a copy of all legal papers received or prepared or received by Terremark in connection with such action or proceeding.
- h. Neither permitting Terremark to proceed with the Work subsequent to any missed schedule or performance of any Work (as such date may have been extended pursuant to Article 33 "Extension of Time Not Cumulative") nor the making of any payments to Terremark shall compromise the County's contractual right to assess liquidated damages or to declare Terremark in default.

ARTICLE 33. EXTENSION OF TIME NOT CUMULATIVE

In the event Terremark shall be delayed concurrently by two or more of the causes identified in Article 32 "Extension of Time" above, Terremark shall be entitled to a separate extension of time for each one of the causes but only one period of extension shall be granted for the delay. In addition, Terremark shall not be entitled, by reason of a delay, to an extension of time for the completion of the overall Work unless the overall Work is necessarily affected by the delay. Accordingly, in the event of a delay, Terremark shall proceed continuously and diligently with the performance of the unaffected portions of the Work.

ARTICLE 34. NO DAMAGES FOR DELAY

Terremark hereby agrees to make no claim for damages for delay, whether contemplated or not contemplated, in the performance hereunder occasioned by any acts or omissions to act of the County, or any of its representatives or other contractors, and agree that any such claim shall be

fully compensated for by an extension of time to complete performance of the Work, as provided for in Articles 32 and 33 "Extension of Time", Extension of "Time Not Cumulative", and "No Damages for Delay", provided that Verizon reserves the right to require the cancellation of an Order if the delay becomes excessive.

ARTICLE 36. FORCE MAJEURE

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

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

TERREMARK

By: Patricia L. Myers
Name: Patricia L. Myers
Title: Manager
Pricing/Contract Management
Date: 4/18/17
Attest: _____
Corporate Secretary

Corporate Seal



Angela A. Cooper
4/18/17

MIAMI-DADE COUNTY

By: Carlos A. Gomez
Name: County Mayor
Title: _____
Date: 6/20/17
Attest: _____
Clerk of the Board

Approved as to form
and legal sufficiency



Assistant County Attorney

**Appendix A – Scope of Services****OVERVIEW**

Miami-Dade County requires colocation space for its daily operations. Terremark shall provide the following services at the NAP of the Americas facility:

Description
Network Exchange Pt Service
Cross Connect: Gigabit Ethernet 1000LX (SM Fiber 1319nm 10km)
Gig-E Interconnect Between Miami-Dade & FPL FIBERNET LLC
IP Addressing Fee (Block of 32)
Cross Connect-POTS
Cross Connect - GigE
Connectivity MRS Committed Core Speed (750 Mbps)
Co-Location Services
600 square feet of secured continuous Collocation space.
Recurring Power Requirements: Power-48vDC, 80amp, CPS(A&B) Power-120vAC, SP, 20amp, CPS (A) Power-120vAC, SP, 30amp, CPS (A) Power-120vAC, SP, 30amp, CPS (A&B) Power-208vAC, SP, 30amp, CPS (A&B) Power-208vAC, 3P, 50amp, CPS(A&B) Power-208vAC, 3P, 30amp, CPS(A&B) Power-208vAC, 3P, 60amp, CPS(A&B)

SUPPORT

Terremark's Network shall provide support services for problem resolution as outlined in 4 Section F below (Performance Standards).

COLOCATION SPACE REQUIREMENTS

The colocation space houses Miami-Dade County's Enterprise Information Technology infrastructure. This includes, but is not limited to: servers, storage arrays, backup infrastructure, and the supporting network infrastructure. For disaster recovery purposes, this equipment must be in a secure and stable location. To safeguard the network infrastructure, the colocation space shall provide the following features:

- Dedicated, locked, and caged 600 square-foot of contiguous space within the NAP facility
- 24x7 security including at the Data Center:
 - Camera monitoring maintained throughout the Data Center. Customer has the ability to

purchase this additional security services that allow for camera monitoring dedicated to Customer's colocation space Stationed and Roving security guards maintained throughout the Data Center. Customer has the ability to purchase this additional security services that allow for a stationed security guard dedicated to Customer's colocation space.

- Keycard access throughout facility, with restrictions applied based on our security protocols.
- Fully redundant commercial power feeds to provide auxiliary power for extended outages
- Fire suppression system
- Smoke detectors
- Redundant climate cooling infrastructure

ELECTRICAL POWER REQUIREMENTS

Terremark shall deliver conditioned electrical power to the County's equipment by means of dedicated electrical circuits. Miami-Dade County anticipates the usage of the following circuit types illustrated on the following chart:

Description	Estimated Quantity
Power-48vDC, 80amp, CPS(A&B)	1
Power-120vAC, SP, 20amp, CPS (A)	2
Power-120vAC, SP, 30amp, CPS (A)	1
Power-120vAC, SP, 30amp, CPS (A&B)	3
Power-208vAC, SP, 30amp, CPS (A&B)	8
Power-208vAC, 3P, 50amp, CPS(A&B)	1
Power-208vAC, 3P, 30amp, CPS(A&B)	3
Power-208vAC, 3P, 60amp, CPS(A&B)	1

APPENDIX B – PAYMENT SCHEDULE

PAYMENT SCHEDULE

Unless otherwise specifically set forth in a Service Order, Terremark will not issue an invoice for the non-recurring charges (as defined in the applicable Service Order), which are due and payable immediately upon the execution of the applicable Service Order. Failure to timely remit the non-recurring charges will result in a delay in the delivery of Services to Customer.

The following rate table illustrates the monthly fees that will be charged to the County for the services requested:

Description	Unit Price	Estimated Quantity	Extended Price
Cross Connect: Gigabit Ethernet 1000LX (SM Fiber 1319nm 10km)	\$350.00	2	\$700.00
IP Addressing Fee (Block of 32)	\$40.00	1	\$40.00
Cross Connect-POTS	\$50.00	3	\$150.00
Cross Connect - GigE	\$365.00	2	\$730.00
Connectivity MRS Committed Core Speed (750 Mbps)	\$4,500.00	1	\$4,500.00
600 square feet of secured continuous Collocation space.	\$37.80	600	\$22,680.00
Power-48vDC, 80amp, CPS(A&B)	\$1,288.00	1	\$1,288.00
Power-120vAC, SP, 20amp, CPS (A)	\$198.00	2	\$396.00
Power-120vAC, SP, 30amp, CPS (A)	\$297.00	1	\$297.00
Power-120vAC, SP, 30amp, CPS (A&B)	\$588.50	3	\$1,765.50
Power-208vAC, SP, 30amp, CPS (A&B)	\$1,575.00	8	\$12,600.00
Power-208vAC, 3P, 50amp, CPS(A&B)	\$2,866.00	1	\$2,866.00
Power-208vAC, 3P, 30amp, CPS(A&B)	\$1,694.50	3	\$5,083.50
Power-208vAC, 3P, 60amp, CPS(A&B)	\$3,509.00	1	\$3,509.00

Monthly Total:

\$ 56,605.00

ATTACHMENT A**Colocation Service Attachment for Terremark Data Centers**

This Verizon Colocation Service Attachment, for Terremark data centers locations (as listed below), including all Service Orders, Orders, RFI Responses, and appendices sets out the rules for collocating equipment, connecting to the Verizon Peering fabric and ordering Managed and Professional Services for such colocation ("Service Attachment for Terremark Data Centers"). This Service Attachment for Terremark Data Centers consists of the License, Requirements, General and Colocation Administrative Requirements and Technical Requirements (collectively, the "Requirements") set out below, and all fully executed Exchange Point Registration Forms (defined below), Service Orders (defined below) and Orders (defined below). Terremark and Customer may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

Terremark Data Center Locations:

- Ashburn
- Atlanta
- Billerica
- Carteret
- Culpeper
- Doral
- Elmsford, NY
- Englewood
- Herndon
- Houston
- Irving
- Kent
- Manassas
- Miami
- Norcross
- Piscataway
- Richardson (Alma)
- Richardson (Parkway)
- Santa Clara
- San Jose
- Torrance
- Westmont

(Latin America)

- Bogota, Colombia
- Sao Paulo, Brazil

TERREMARK'S RESPONSIBILITIES,

Terremark will provide Customer with the Services Customer requested in the Service Order, at the fees for such Services listed in the Service Order. Terremark agrees that the fees for the Services set forth in the Service Order will not change for the term of the Service Order other than pass through increases for power Services pursuant to Section C.3 (Floor and Electric Loads) below.

Pursuant to Article 7. Fees and Payment, Terremark will provide:

- Cabinet Customers with (i) a designated cabinet, (ii) the power circuits Customer requested on the Service Order, (iii) the Intra-facility cabling ("IFC") Customer requested on the Service Order to connect Customer's Equipment Space to Terremark's Meet Point Room ("MPR");
- Cage Customers with (i) a cage made from Terremark's standard cage material with a key lock door, (ii) the power circuits Customer requested on the Service Order, and (iii) the IFC Customer requested on the Service Order to connect Customer's Equipment Space to Terremark's MPR; and
- Exchange point or managed router Services Customers, allocated port(s) in Terremark's equipment and cables necessary to connect Customer's equipment in its Equipment Space to Terremark's Exchange Point fabric or managed router Service.

Service Orders shall be due and invoiced pursuant to Article 7. Fees and Payment of the Agreement.

CUSTOMER'S RESPONSIBILITIES.

By executing a Service Order with us, Customer represents to Terremark that Customer understands and agrees that:

- i. If Customer has chosen Exchange Point Services, Customer is requesting the right to establish a Connection;
- ii. If Customer has chosen colocation Services, Customer is requesting that Terremark assign Customer Equipment Space at the Terremark Facility;
- iii. Customer has read, understands and agrees to govern itself by the Requirements;
- iv. Customer will pay all undisputed fees when due pursuant to Article 7. Fees and Payment of the Agreement;
- v. Terremark may revise or amend the Requirements from time to time, as it deems necessary, provided that the Requirements will not unreasonably interfere with the operation of Customer's telecommunications network;
- vi. If Customer places a telephone Order with Terremark or provides any instructions to Terremark via telephone, Customer agrees that Terremark's telephone call logs constitute full and conclusive proof of the content of Customer's Order;
- vii. If Terremark revises or amends the Requirements, Terremark will advise Customer by sending the revised Requirements to Customer's contact email five (5) business days before the revision or amendment becomes effective;
- viii. If Terremark institutes a revision or amendment in good faith to correct a problem that materially affects Terremark's ability to operate the Terremark Facility, or materially impairs Customers' ability to operate their network when connected to the Terremark Facility ("Critical Change"), then Customer shall comply with the Critical Change, provided, however, Customer may terminate this Agreement at the conclusion of the affected Service Order(s), or terminate the Service Order immediately, without cause pursuant to Article 28. Termination and Suspension of Work of the Agreement and Section B.5 (Termination of a Service Order) of the Requirements;
- ix. If the Critical Change materially impairs Customer's ability to operate its network, and, after working together in good faith, the parties hereto cannot develop a Critical Change that does not materially impair Customer's ability to operate its network within a reasonable period of time, then Customer may terminate the affected Service Order with cause pursuant to Article 28. Termination and Suspension of Work of the Agreement and Section B.5 (Termination of a Service Order) of the Requirements;
- x. If Customer does not object in writing to any revisions to the Requirements within five (5) business days and maintains the Connection after a revision or amendment goes into effect, Customer shall be deemed to agree to such revision or amendment; and
- xi. If Customer rejects a revision or amendment to the Requirements that is not a Critical Change after

good faith discussions with Terremark, the revision or amendment will not be put into effect for Customer for the remainder of the Term of the applicable Service Order(s); however, Terremark may terminate this Agreement at the conclusion of the outstanding Service Order(s).

TERREMARK REGISTRATION REQUIREMENTS

A. CUSTOMER REQUIREMENTS.

Customer must have its own permanent connection to the Internet.

Customer must show that it has paths from an IP address within the Autonomous System (AS) that will be presented to Terremark, to four of the Internet "root" name servers (hosts in the domain 'root-servers.net', excluding 'k'). The route prefix including this address must be visible as originating from this AS on any Internet router containing a full set of Internet routes.

B. GENERAL ADMINISTRATIVE REQUIREMENTS.

These "General Administrative Requirements" apply both to exchange point services and colocation Services:

1. **Peering.** The peering agreements that Customer and any of Terremark's Other Customers may establish between and among each other are binding on Customer and Terremark's Other Customers. Terremark will not be party to Customer's peering agreements with the Terremark's Other Customers and those agreements will not be binding on Terremark.
2. **Customer Communication.** Except as provided herein, Terremark will communicate with Customer and all Terremark's Other Customers, and Terremark's Other Customers will communicate with Customer and each other, primarily via email. Customer must ensure that all contact information it provided to Terremark in the RFI remains correct and current throughout the Term.
3. **Customer Contacts.** Customer must identify the people who will serve as its Customer contacts and provide Terremark contact details so that Terremark and its Customers may contact them as necessary. The personnel Customer designates as its Customer contacts must understand that they are on call twenty-four hours per day, seven days per week.
4. **Peering Requests.** Customer must provide Terremark an email address to which Terremark's Other Customers may send requests for peering. If any of Terremark's Other Customers, or a potential new Terremark's Other Customer, sends Customer a peering request to the email address that the Terremark's Other Customer provides for that purpose, Customer must respond to that peering request within five (5) working days.
5. **Service Order Term.** The Service Order Term will be the period identified on the Service Order. Thereafter, the parties agree to negotiate reasonably and in good faith the rates, terms and conditions of any new Service Order.
6. **Termination of Service Order.** If Customer terminates a Service Order without Cause (as defined in the Agreement), or if Terremark terminate a Service Order due to Customer's Default (as defined in the Agreement), before the end of the Term, Customer agree to pay Verizon a termination liability charge equal to the monthly fees due under that Service Order multiplied by the number of months left before the end of the Term of that Service Order. The parties acknowledge that the Termination Fee is an estimate of the actual damage that Verizon will suffer and is not a penalty.

7. **Regulatory.** If any federal agency or state body of competent jurisdiction determines that any provision of this Agreement violates any applicable rules, policies, or regulations, both Parties hereto shall make reasonable efforts to immediately bring this Agreement into compliance and shall endeavor in those efforts to preserve for both Parties the economic benefits as reflected in this Agreement to the maximum extent possible. Terremark reserves the right to disclose information relating to a Service Order if required to do so by law, regulation, local, state or federal governmental request, or in the good faith belief that such action is necessary to: (a) conform to the edicts of the law or comply with legal process served on Terremark, its parent, or Affiliates; (b) protect and defend the rights or property of Terremark, its parent, or Affiliates; or (c) act under exigent circumstances to protect the personal safety of users of the Services or members of the public.
8. **Compliance.** The Parties agree to adhere to all applicable export laws and regulations of the United States and that, absent any required prior authorization from the Office of Export Licensing, U.S. Department of Commerce, Bureau of Industry and Security ("BIS") or the U.S. Department of State, Directorate of Defense Trade Controls ("DTC"), each agrees it will not knowingly export or re-export (as defined in Part 772 of the Export Administration Regulations ("EAR") (15 C.F.R. Parts 730-774) and Part 120 of the International Traffic in Arms Regulations ("ITAR") (22 C.F.R. Parts 120-130)) directly or indirectly, through its respective Affiliates (as hereinafter defined), or subsidiaries, any of the Information (or any product, process, or service resulting directly there from) received under this or any ancillary agreements, to any country named in Country Groups -E1, or E2 in Supp.1 to Part 740 of the EAR or any other country hereafter restricted by the U.S. law or governmental order, including destinations subject to sanctions administered by the U.S. Department of the Treasury, Office of Foreign Assets Control ("OFAC"). Customer represents that neither Customer, its employees, or businesses under its control (i) is a person whose property or interest in property is blocked or subject to blocking pursuant to, among others, Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) as amended, and Executive Order 13268 of July 3, 2002 (67 Fed. Reg. 44751 (2002)) and Executive Order 13372 of February 16, 2005 (70 Fed. Reg. 8499 (2005)), (ii) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such person in any manner in violation of Section 2, or (iii) is a person on the list of Specially Designated Nationals or subject to the limitations or prohibitions under any other OFAC regulation or executive order. Customer represents that it, its employees and businesses under Customer's direct control are in compliance, in all material respects, with the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as amended.

C. COLOCATION LICENSE AND ADMINISTRATIVE REQUIREMENTS.

In addition to the General Administrative Requirements set forth above, the following Colocation License and Administrative Requirements apply when Customer orders colocation services from Terremark:

1. **Use of Equipment Space.** By accepting a Service Order for colocation services, Terremark grants Customer an exclusive license ("License") to use the Equipment Space at the colocation site ("Premises"), the actual location of which Terremark will designate prior to installation. Terremark may, at its option, elect to substitute the Equipment Space for other space at the same Terremark Facility designated by Terremark. If Terremark substitutes the Equipment Space, Terremark will notify Customer prior to such substitution and the substitute space will contain approximately equal area and substantially similar configuration and access to power and other engineering requirements that Customer needs and otherwise will not unreasonably interfere with or interrupt the operation of Customer's telecommunications network. Terremark will bear the reasonable expenses for such a move.

2. **Prohibited Uses.** Customer shall not, at any time, use or allow any person to use the Equipment Space, or do or permit anything to be done or kept in or about the Equipment Space, for activities other than those typically associated in the industry with the colocation of telecommunication equipment. Customer shall not engage in or provide any services either directly or indirectly related to the trading of bandwidth, or that compete with the services that Terremark provides via Terremark's Peering Fabric, or physical or optical cross connect platforms (collectively, "Competing Services"). Customer shall not market, solicit, license or sell colocation services in the Equipment Space to any third party that Customer knows is using the Equipment Space to engage in or provide Competing Services. Notwithstanding the foregoing, Customer may allow Customer's vendors and customers to colocate in the Equipment Space if such colocation is needed to permit the vendor or customer to connect to Customer's network.
3. **Floor and Electric Loads.** Customer shall not place a load upon any floor of the Premises that exceeds either the load per square foot that such floor was designed to carry or that is allowed by law. Terremark reserves the right, subject to reasonable industry standards, to prescribe the weight and position of all equipment. Customer will not exceed peak electrical load of 80 Watts per square foot in Customer's space without Terremark's consent. Customer will not exceed 75% of the rated capacity of any individual circuit. Customer understands that Terremark's cost of power is beyond Terremark's control and may increase over time. If the power rates that Terremark pays increase by more than 5% above current levels, Terremark reserve the right to increase the Monthly Recurring Power Fee (as defined in the applicable Service Order) Customer pays by that same percentage.
4. **Equipment Removal.** Prior to the expiration of this License, Customer, at its expense, shall remove from the Equipment Space, all of Customer's property, and Customer shall repair any damage to the Premises resulting from the installation or removal. Customer shall not make any changes or alterations to the Equipment Space except as is reasonably necessary to install Customer's equipment, conduct Customer's business or remove Customer's equipment, provided Customer return the Equipment Space to its original condition, subject to usual wear and tear.
5. **Access to Equipment Space.** Customer's use of the Equipment Space, installation of equipment, and access to the Premises at all times shall be subject to Customer's adherence to the rules and regulations promulgated from time to time by the applicable Terremark Facility. Nevertheless, Customer will be permitted to use the Equipment Space and have access through the Premises (defined below) to the Equipment Space, 24 hours per day, 365 days per year.
6. **License Fee.** Customer shall pay to Terremark a monthly recurring fee for use of the Equipment Space ("Monthly-Recurring Charges") in accordance with the Service Order.
7. **This is not a Lease.** This Agreement shall not, under any circumstances, be deemed a lease or a grant to Customer of an interest in real property. Upon termination, if Customer does not remove its equipment within five (5) days following written notice from Terremark, Customer will owe Terremark holdover charges equal to three (3) times the contractual Monthly-Recurring Charges. All sums due to Terremark for Services actually rendered, or Services or other sums accelerated as a termination liability charge pursuant to Section B.6 (Termination of a Service Order) above, or otherwise, are stipulated and deemed to be sums owed for Services performed on all Customer's personal property located within Customer's Equipment Space or otherwise in Terremark's possession.

D. TECHNICAL REQUIREMENTS.

1. Customer's equipment must meet Terremark's published minimum Terremark Equipment Technical Requirements that shall be provided to Customer by Terremark client services.
2. Customer may only connect equipment that Customer owns and operates to Terremark's peering LAN. Customer may not connect equipment to Terremark's peering LAN on behalf of third parties.
3. Customer must only use IP addresses on the interface(s) of Customer's router(s) connected to Terremark's peering LAN which Terremark allocates to Customer.
4. Customer may only present a single MAC address to any of Terremark's individual ports that is allocated to Customer.
5. Customer must register in advance all routes to be announced through a peering in the ARIN, RIPE or equivalent routing registry.
6. Customer must have its own Autonomous System ("AS") number and must register the routing policy for AS in the ARIN, RIPE or equivalent routing registry.
7. Peering between Customers' routers across the Terremark Peering Fabric will be via BGP-4.
8. Customer shall not generate unnecessary route flap or advertise unnecessarily specific routes in peering sessions with Terremark's Other Customers across the Terremark Peering Fabric.
9. Customer may not advertise routes with a next-hop other than that of Customer's own routers without Terremark's prior written permission or that of the advertised party.
10. Customer may not forward traffic across the Terremark Peering Fabric unless either the traffic follows a route advertised in a peering session at the Terremark Peering Fabric or where Customer has received prior written permission to do so from the Customer to whom the traffic is forwarded.
11. On all interfaces connected to us, Customer must disable:
 - Proxy ARP, ICMP redirects, CDP, IRDP, Directed broadcasts, IEEE802 Spanning Tree, Interior routing protocol broadcasts, and all other MAC layer broadcasts except ARP; and
 - Any duplex, speed, or other link parameter auto-sensing.
12. Customer shall not announce ("leak") prefixes including some or all of Terremark's peering LAN to other networks without Terremark's explicit written permission.
13. Customer must set net masks on all interfaces connected to Terremark to include Terremark's entire peering LAN.
14. Any equipment and/or cabling that Customer installs at the Terremark Facility must be clearly labeled as belonging to Customer.
15. Customer will not touch equipment and/or cabling owned by Terremark or Terremark's Other Customers and installed at the Terremark Facility, or in the room containing Terremark's peering equipment, without both the explicit written permission of both Terremark and Terremark's Other Customer who owns the equipment.

16. Customer will not install 'sniffers' to monitor traffic passing through the Terremark Peering Fabric, except through Customer's own ports.
17. Customer will not circulate correspondence on confidential Terremark mailing lists to non-Customers.
18. Notwithstanding anything to the contrary contained in Section C.2 (Prohibited Uses), Customer is permitted to run hardwire cable to and from its customers within Customer's Equipment Space. Customer will not permit or assist its customers to run hardwire cable between themselves in Customer's Equipment Space without Terremark's prior consent. Customer may not run hardwire cable between Customer's Equipment Space and Terremark's Other Customers outside Customer's Equipment Space without Terremark's prior consent, which Terremark may withhold in Terremark's sole discretion or permit under certain conditions, including but not limited to the payment of fees.
19. Customer shall not routinely use the Terremark Peering Fabric for carrying traffic between Customer's own routers.
20. Customer's use of the Terremark Peering Fabric must at all times conform to the relevant standards as laid out in STD0001 (RFC2600) <http://www.ietf.org/rfc/rfc2600.txt> and associated Internet STD documents.

E. INSURANCE AND LIABILITY.

1. Insurance.

- (a) Throughout the Term, Customer will maintain and will require any of its subcontractors to maintain the following insurance coverages:
 - i. Commercial General Liability Insurance, on an occurrence basis, including but not limited to, premises-operations, broad form property damage, products/completed operations, contractual liability, independent contractors, and personal injury, with limits of at least \$2,000,000 combined single limit for each occurrence and aggregate policy limit.
 - ii. Automobile Liability Insurance, written on an ISO Business Auto Coverage Form, covering all owned, non-owned and hired vehicles, in an amount not less than \$2,000,000 single limit per accident.
 - iii. Excess Liability Insurance, with respect to Commercial Liability Insurance, Automobile Liability Insurance and Employer's Liability Insurance, with limits of at least \$10,000,000 for each occurrence and aggregate policy limit.
 - iv. Worker's Compensation Insurance as required by Applicable Law and Employer's Liability Insurance with limits of not less than \$2,000,000 each accident, \$2,000,000 by disease-each employee and \$2,000,000 by disease-policy limit.
 - v. All-Risk Property Insurance in an amount not less than replacement cost of Customer's property.
- (b) All insurance policies will be issued by carriers with A.M. Best solvency ratings of at least A-VII. Terremark North America LLC and its Affiliates will be named as an additional insured with respect to all coverages except Worker's Compensation and All-Risk Property Insurance above. Customer's insurance will be primary and non-contributory to any other policies with respect to its operations. The Commercial General Liability insurance will contain the "Amendment of the Pollution Exclusion" endorsement for damage caused by heat, smoke or fumes from a hostile fire.

- (c) Terremark will not insure or be responsible for any loss or damage to property of any kind owned or leased by Customer, its Affiliates, employees or agents other than losses or damages proximately resulting from Terremark's sole negligence or willful misconduct. Any Customer insurance policy covering the equipment against loss or physical damage will expressly provide that the policy's underwriters waive their rights of subrogation against Terremark and its Affiliates, and their respective directors, officers and employees ("Providers"), except for such loss or physical damage proximately caused by the sole negligence or willful misconduct of the Providers.
- (d) Certificate(s) evidencing the insurance coverages and other requirements of this Section E (Insurance and Liability) will be submitted to Terremark upon execution of the Agreement. The certificate(s) will certify that no material alteration, modification or termination of such coverage will be effective without at least thirty (30) days advance written notice to Terremark at: One Biscayne Tower, 2 S. Biscayne Blvd, Suite 2800, Miami, FL, 33131 with a copy to Verizon Business Services 22001 Loudoun County Parkway, Ashburn, VA 20147, Attn: Vice President Legal.

F. PERFORMANCE STANDARDS

The services provided by the Contractor shall meet the performance standards described below. They shall be provided at the dependability levels specified below:

1. Technical Support available 365x24x7
2. Power, Temperature and Humidity SLA's - Please see Exhibit 1 for associated Service Level Agreements for the NAP.
3. Planned Outages. In the event that the Contractor must perform maintenance or other work that will cause an outage to the County's equipment, the Contractor shall provide notice to the County's project manager at a minimum of forty-eight hours in advance.