

ISSUING DEPARTMENT INPUT DOCUMENT

CONTRACT/PROJECT MEASURE ANALYSIS AND RECOMMENDATION

New
 OTR
 Sole Source
 Bid Waiver
 Emergency
 Previous Contract/Project No. SS7991-15/22
 Contract
 Re-Bid
 Other – Access of Other Entity Contract
 LIVING WAGE APPLIES: YES NO
 Requisition No./Project No.: L-7991
 TERM OF CONTRACT 1 YEAR(S) WITH 2 YEAR(S) OTR

Requisition /Project Title: Emphasys Elite Maintenance and Technical Support

Description: This contract will be for the maintenance and technical support of the Emphasys Elite Section 8 Software that it utilized by Public Housing & Community Development.

Issuing Department: Internal Service
 Contact Person: Brandon Nealey
 Phone: 305-375-4884
 Estimate Cost: \$500,000
 Funding Source:
 GENERAL
 FEDERAL
 OTHER

ANALYSIS

Commodity Codes: 20564
 Contract/Project History of previous purchases three (3) years
 Check here if this is a new contract/purchase with no previous history.

	<u>EXISTING</u>	<u>2ND YEAR</u>	<u>3RD YEAR</u>
Contractor:	<u>Emphasys Computer Soluti</u>		
Small Business Enterprise:	<u>\$7,960,295</u>		
Contract Value:			
Comments: <u></u>			
Continued on another page (s): <input type="checkbox"/> YES <input type="checkbox"/> NO			

RECOMMENDATIONS

	Set-Aside	Subcontractor Goal	Bid Preference	Selection Factor
SBE	<u></u>	<u></u>	<u></u>	<u></u>

Basis of Recommendation:

Signed: Brandon Nealey
 Date sent to SBD: 7/21/2021
 Date returned to SPD:

Emphasys Elite Maintenance and Technical Support Services
Contract No.

THIS AGREEMENT for the provision of _____, made and entered into as of this _____ day of _____ by and between Emphasys Computer Solutions, Inc., a corporation organized and existing under the laws of the State of Florida, having its principal office at 1200 SW 145th Avenue, Suite 301, Pembroke Pines, FL 33027 (the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 NW 1st Street, Miami, Florida 33128 (the "County") (collectively, the "Parties").

WITNESSETH:

WHEREAS, the County has obtained Emphasys Elite Section 8 Software upgrade and additional modules HQS Inspections, Handheld HQS, Executive Portal Information Management and Data Hub; including maintenance and support services;

WHEREAS, the County wishes to obtain ongoing maintenance and support services, and to establish a framework for obtaining additional products and/or professional services for the Emphasys Elite Section 8 Software:

WHEREAS, the Contractor agrees to provide ongoing maintenance and support services, and to establish a framework for delivering additional products and/or professional services for the Emphasys Elite Section 8 Software;

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

ARTICLE 1. DEFINITIONS

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

- 1.1 The words "Article" or "Articles" to mean the terms and conditions delineated in this Agreement.
- 1.2 The words "Application Software" to mean the software described in Appendix B,
- 1.3 The word "Contract" to mean collectively the (i) Articles, (ii) Scope of Services, (iii) Price Schedule, (iv) all other appendices and attachments hereto, and (v) all amendments issued hereto.
- 1.4 The words "Contract Manager" to mean the Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.
- 1.5 The word "Contractor" to mean Emphasys Computer Solutions, Inc. and its permitted successors.
- 1.6 The word "Days" to mean calendar days.
- 1.7 The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the Project Manager for review and approval pursuant to the terms of this Agreement.
- 1.8 The words "Developed Works" to mean all rights, title, and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its Subcontractors specifically for the County. For greater certainty, Developed Works shall not include the Application Software.
- 1.9 The word "Documentation" to mean all manuals, user documentation, and other related materials pertaining to the Software which are furnished to the County in connection with the Software.
- 1.10 The words "Licensed Software" to mean the software component(s) provided pursuant to the Contract.

- 1.11 The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- 1.12 The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the Work to be performed by the Contractor.
- 1.13 The words "Service" or "Services" to mean the provision of maintenance and support services in accordance with the Scope of Services.
- 1.14 The words "Standard Support" to mean the services being provided by the Contractor in Appendix A, Scope of Services.
- 1.15 The words "Standard Support Fee" to mean the fee associated with the support services provided by the Contractor.
- 1.16 The word "Subcontractor" or "Subconsultant" to mean any person, entity, firm, or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- 1.17 The words "Third Party Software" to mean programs that are developed by companies other than the Contractor that developed the software in use.
- 1.18 The word "Upgrades" to mean periodic releases of the Application Software that contain significant enhancements that may include changes necessary to accommodate changes in the hardware platform, database platform, operating system or major changes in capability and functionality.
- 1.19 The word "Work" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) Articles 1 through 55, 2) Appendix A, and 3) Appendix B.

ARTICLE 3. RULES OF INTERPRETATION

- 3.1 References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- 3.2 Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- 3.3 The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- 3.4 The terms "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the Project Manager.
- 3.5 The terms "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the reasonable opinion of the Project Manager.
- 3.6 The titles, headings, captions, and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify, or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- 4.1 This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The Parties agree that there are no commitments, agreements, or

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

- 4.2 The Contractor shall provide the services set forth in the Scope of Services and render full and prompt cooperation with the County in all aspects of the Work performed hereunder.
- 4.3 The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work necessary for the completion of this Contract. All Work shall be accomplished at the direction of and to the satisfaction of the Project Manager.
- 4.4 The Contractor acknowledges that the County shall make all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor shall implement all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective on the date of the Parties' execution, whichever is later, and shall continue through the last day of the 12th month, thereafter. The County, at its sole discretion, may renew this Contract for two (2), one (1) year option to renew on a year to year basis. The County may extend this Contract for up to an additional one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners (the "Board").

ARTICLE 6. GRANT OF LICENSE

Contractor grants to the County a nonexclusive, nontransferable, non-assignable, non-perpetual license to use the software identified in Appendix B ("Application Software") and Contractor, as authorized agent, grants to the County a nonexclusive, nontransferable, non-assignable, non-perpetual license to use the software described in Appendix B ("Other Licensed Software"). The license is solely for the County's own use for its internal data processing operations and solely on the one computer system currently used by the County or purchased and delivered hereunder. The County agrees to abide by all terms and conditions as required by the manufacturers of the Other Licensed Software.

ARTICLE 7. MAINTENANCE AND SUPPORT SERVICES

- 7.1 Contractor agrees to provide Standard Support, as defined in this Agreement, for the Application Software licensed to the County. Contractor agrees to provide Standard Support to enable the Application Software to perform substantially without interruption and error, and in substantial compliance with the then current Documentation and the then current mandated changes.
- 7.2 Contractor is to provide support to the County for technical issues arising from the Application Software malfunctioning relative to the functionality described in the Documentation. Any additional services to support the County are outside the scope of this Agreement.
- 7.3 "Software for Life": The County shall be entitled to Upgrades without having to repurchase Contractors proprietary software licenses. During the term of this Agreement, the County shall be entitled to any substantially equivalent future Upgrades of that originally licensed module at no additional license fee, provided that all related Standard Support Fees have been paid since the original licensing of that module. The County is responsible for purchasing any third party required product (hardware or software) and Services required to properly implement the Upgrade.
- 7.4 Standard Support means the following services shall be provided by Contractor to the County at no additional cost to the County:

- a) Technical troubleshooting and assistance with Application Software in order to restore the Application Software's functionality to its operational condition prior to any known errors and to comply with related published Documentation, the current published software manuals and mandated changes.
- b) Corrections of errors, interruptions, malfunctions or defects in the Application Software to enable the Application Software to substantially conform to published Documentation.
- c) Assistance with errors caused by routine software fixes or enhancements that are correctly installed, as directed in writing by Contractor.

- 7.5 **Request for Service.** At any time, the County may report its request for service and its priority code by fax using Contractors' dedicated support fax phone number, its 800-support number or e-mail. If the County believes that the support event is a Priority 1, the County shall make every reasonable effort to determine if the event is hardware or software-related prior to requesting support from Contractor.
- 7.6 **Standard Required Information.** When contacting Contractor for Standard Support, the County shall provide the following information: Licensee name, phone and contact person, the name of the Application Software module (e.g., General Ledger, Low Income, Section 8, etc.), the menu item that was selected and the exact difficulty that was experienced. The County understands and agrees that its full cooperation and assistance are necessary for Contractor to properly respond to a request for service. The County is responsible for notifying Contractor of any Application Software problems and providing written documentation of Application Software problems with specific examples.
- 7.7 **Install Latest Third Party Software.** The County agrees to install in their live environment the latest released version of Third Party Software that is used by and compatible with the Application Software within two (2) years of general release by said third party. During such two (2) year period, Contractor shall use its best efforts to continue to support the Application Software using the County's version of the Third Party Software. In the event a Third Party Software product or version thereof is discontinued, phased-out or no longer supported by its owner, Contractor obligation to support that Software shall cease.
- 7.8 **Install Latest Application Software.** The County agrees to install the latest released Upgrade of the Application Software in their live environment within 6 (six) months of release by Contractor.
- 7.9 **Reasonable Access.** The County agrees to provide Contractors' personnel involved with the operation and support of the Application Software reasonable access to perform activities necessary to fulfill its obligations under this Agreement. The County will provide Contractor with predefined passwords that will not change without the prior approval of the County. The County agrees to provide Contractor appropriate access to the County's computer system during normal business hours via Contractor approved telephone modem and modem software. The County will also provide its own Internet access and connection. Such provision shall be operable prior to initial software installation and shall remain operable for the duration of Contractors' obligation to the County for software support services.
- 7.10 **Data for Support.** The County will make available to Contractor, on a reasonable basis, data necessary for the successful support of the Application Software, including all currently existing critical files. All such data shall be considered to be the County's proprietary information, and Contractor shall retain same in strict confidence and shall not use or disclose such proprietary information except to the extent necessary to perform services hereunder.
- 7.11 **Backups.** The County shall create and keep current backups, not older than two (2) working days, of all Application Software and related data files. The County further agrees to make backups available for restoration purposes if needed by Contractor. Any backup services provided by Contractor shall result in billable time to the County.
- 7.12 **Modifications by the County.** In no event shall Contractor be liable or responsible for correcting any errors or damage resulting from changes or modifications to the Application Software made by the County.
- 7.13 **Designated County Contact.** It is the intent that only the County designated contacts or, in their absence, their assignees initiate support calls to Contractor.

ARTICLE 8. PURCHASE OF ADDITIONAL PRODUCTS AND SERVICES

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

ARTICLE 9. INTENTIONALLY DELETED

ARTICLE 10. NOTICE REQUIREMENTS

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

(1) To the County

- a) to the Project Manager:

Miami-Dade County
Attention: Gerald Farr
Phone: 786-469-4186
E-mail: gerald.farr@miamidade.gov

and

- b) to the Contract Manager:

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

(2) To the Contractor

Emphasys Software-PHA Division
1200 SW 145th Avenue, Suite 301
Pembroke Pines, FL 33027

Attention: Delia Niswonger
Phone: (800) 968-6884 Ext. 3038
E-mail: dniswonger@emphasys-software.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. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other

inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work to be performed under this Contract. The compensation for all Work performed under this Contract, including all costs associated with such Work and Services, shall be paid in accordance with Appendix B. The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

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

ARTICLE 12. PRICING

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

ARTICLE 13. METHOD AND TIMES OF PAYMENT

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

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

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

Miami-Dade Public Housing & Community Development
701 NW 1st Court, 16TH Floor
Miami, FL 33136-3914
Attention: Accounts Payable Section
PHCDpayables@miamidade.gov

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

ARTICLE 14. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of,

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

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

1. Worker's Compensation Insurance for all employees of the Contractor as required by Chapter 440, Florida Statutes.
2. Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence \$2,000,000 in the aggregate to include blanket contractual liability. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
3. Automobile Liability Insurance covering all owned, non-owned and hired vehicles, in an amount not less than \$1,000,000 combined single limit.
4. Technology Professional Liability Insurance in an amount not less than \$5,000,000 per occurrence and in the aggregate.
5. Cyber Liability Insurance to include, data breach and ransomware in an amount not less than \$5,000,000 and in the aggregate.
6. Umbrella or excess liability \$5,000,000 per occurrence and in the aggregate.

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

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

OR

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

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

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

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

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

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

ARTICLE 15. MANNER OF PERFORMANCE

- 15.1 The Contractor shall provide the Work described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Work described herein and to full and prompt cooperation by the Contractor in all aspects of the Work. At the request of the County, the Contractor shall promptly remove from the Project any Contractor's employee, Subcontractor, or any other person performing Work hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- 15.2 The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for all claims, suits, actions, damages, and costs (including attorneys' fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing Services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and/or demotion of such Contractor's personnel.
- 15.3 The Contractor always agrees that it will employ, maintain, and assign to the performance of the Work a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so, directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- 15.4 The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character, and licenses as necessary to perform the Work described herein, in a competent and professional manner.
- 15.5 The Contractor shall always cooperate with the County and coordinate its respective work efforts to maintain the progress most effectively and efficiently in performing the Work.
- 15.6 The Contractor shall comply with all provisions of all federal, state, and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 16. EMPLOYEES OF THE CONTRACTOR

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

ARTICLE 17. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all Work and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the Work performed or Services provided pursuant to this Agreement shall always, and in all places, be subject to the Contractor's sole direction, supervision, and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the Work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and

agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement, or representation other than specifically provided for in this Agreement.

ARTICLE 18. WARRANTY

- 18.1 Contractor warrants that it is the owner of the Application Software and Documentation and that Contractor has the right to sublicense such Application Software or Other Licensed Software, as applicable. Contractor further warrants that no portion of the Application Software or Documentation infringes on the intellectual property rights of any third party.
- 18.2 Contractor warrants that the Software will be free from defects in material and workmanship and shall substantially comply with Contractor' then current Documentation. The warranty period of thirty (30) days commences immediately following initial Application Software installation.
- 18.3 These warranties will only be valid when the Application Software is used by the Contractor in an appropriate and reasonable manner consistent with normal usage and management of such Application Software. The exclusive remedy of the County for a breach of these warranty is that the Contractor shall be required to correct, repair, adjust or modify the Application Software if such defect in material or workmanship occurs and is reported by the County in writing within the appropriate warranty period. The Contractor shall not be responsible or liable for damage to the Application Software caused by the County, acts of God, the tampering with or modification of the Application Software by anyone other than the Contractor's authorized personnel, or damage to the Application Software occurring by virtue of electrical malfunctions or external factors over which the Contractor has no control.
- 18.4 THE WARRANTIES PROVIDED IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE FACE HEREOF, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE

ARTICLE 19. THIRD PARTY WARRANTIES

In addition to the foregoing warranties, the Contractor hereby assigns to the County, and the County shall have the benefit of, any and all subcontractor's and suppliers' warranties and representations with respect to the Application Software provided hereunder. In the Contractor's agreements with subcontractors and suppliers, the Contractor shall require that such parties (i) consent to the assignment of such warranties and representations to the County; (ii) agree that such warranties and representations are enforceable by the County in its own name; and (iii) furnish to the County, the warranties and obligations as set forth in Articles 18 "Warranty".

ARTICLE 20. LIMITATION OF LIABILITY

Notwithstanding anything to the contrary herein, the Contractor shall not be liable to the County or any other person for any claim or damages arising directly or indirectly from the furnishing of the Work, equipment, software, Services, or any Documentation relating to such Work, equipment, software or Services provided hereunder or from any other cause, except for claims arising from the negligence or willful misconduct of Contractor or Contractors' employees, agents or subcontractors. Liability of Contractor for negligence or any other cause, shall in no event exceed the total price of the item of Work, equipment, software module, or particular Service that is the subject of the claim. Except for acts of willful misconduct, in no event shall Contractor be liable to the County or any third party for indirect, incidental, special, consequential, or exemplary damages of any kind arising out of the existence, furnishing, functioning or the use of the Work, equipment, software or Services provided hereunder, even if the Contractor has been advised of the possibility of such damages.

ARTICLE 21. DISPUTE RESOLUTION PROCEDURE

- 21.1 The Contractor hereby acknowledges that the 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; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.

- 21.3 The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. **Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.**
- 21.4 In the event of such dispute, the Parties authorize the County Mayor or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Mayor's purview as set forth above shall be conclusive, final and binding on the Parties. Any such dispute shall be brought, if at all, before the County Mayor within ten (10) days of the occurrence, event or act out of which the dispute arises.
- 21.5 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 Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County 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 the Contractor to the County Mayor for a decision, together with all evidence and other pertinent information regarding 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 the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.
- 21.6 This Article will survive the termination or expiration of this Agreement.

ARTICLE 22. MUTUAL OBLIGATIONS

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

ARTICLE 24. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

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

ARTICLE 25. AUDITS

The County, or its duly authorized representatives and governmental agencies, shall until the expiration of three years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's 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 Code, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds within five business days of the Commission Auditor's request. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 26. SUBSTITUTION OF PERSONNEL

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

ARTICLE 27. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

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

ARTICLE 28. SUBCONTRACTUAL RELATIONS

28.1 If the Contractor causes any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts, omissions, and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.

28.2 The Contractor, before making any subcontract for any portion of the Work, will state in writing to the County the name of the proposed Subcontractor, the portion of the Work which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.

28.3 Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Work to be performed. Such Work performed by such Subcontractor will strictly comply with the requirements of this Contract.

28.4 In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Work in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed Work of the same general type which is required to be performed under this Agreement.

28.5 The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the Subcontractor will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County in the event the County finds the Contractor in breach of this Contract, permitting the County to request completion by the Subcontractor of its performance obligations under the subcontract. The clause shall include an option for the County to pay the Subcontractor directly for the performance by such Subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any Subcontractor hereunder as more fully described herein.

ARTICLE 29. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

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

ARTICLE 30. SEVERABILITY

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

ARTICLE 31. TERMINATION AND SUSPENSION OF WORK

31.1 This Agreement may be terminated for cause by the County for reasons including, but not limited to, (i) the Contractor commits an Event of Default (as defined below in Article 24) and fails to cure said Event of Default (as delineated below in Article 25), or (ii) Contractor attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement.

31.2 This Agreement may also be terminated for convenience by the County. Termination for convenience is effective on the termination date stated in the written notice provided by the County.

31.3 If County terminates this Agreement for cause under Article 31.1 above, the County may, in its sole discretion, also terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall pay all direct or indirect costs associated with such termination or cancellation, including attorneys' fees.

31.4 The foregoing notwithstanding, if the Contractors attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement, the Contractor may be debarred from County contracting in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the Code.

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

- i. stop Work on the date specified in the notice (the "Effective Termination Date");
- ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
- iii. cancel orders;
- iv. assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
- v. take no action which will increase the amounts payable by the County under this Agreement; and
- vi. reimburse the County a proration of the fees paid annually based on the remaining months of the term per the compensation listed in Appendix B.

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

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

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

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

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

ARTICLE 32. EVENT OF DEFAULT

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

- i. the Contractor has not delivered Deliverables and/or Services on a timely basis;
- ii. the Contractor has refused or failed to supply enough properly skilled staff personnel;
- iii. the Contractor has failed to make prompt payment to Subcontractors or suppliers for any Services;
- iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
- v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
- vi. the Contractor has failed to provide "adequate assurances" as required under subsection 32.2 below;
- vii. the Contractor has failed in the representation of any warranties stated herein; or
- viii. the Contractor fails to comply with Article 39.

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

- i. treat such failure as a repudiation and/or material breach of this Agreement; and
- ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Work or any part thereof either by itself or through others.

ARTICLE 33. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

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

ARTICLE 34. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, whether or not the County elects to terminate this Agreement as a result thereof, the Contractor shall be liable for all damages resulting from the default, irrespective of whether the County elects to terminate the Agreement, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for re-procurement of Services, including procurement and administrative costs; and
- c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 35. PATENT AND COPYRIGHT INDEMNIFICATION

35.1 The Contractor shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third-party proprietary rights in the performance of the Work.

35.2 The Contractor warrants that all Deliverables furnished hereunder, including but not limited to equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.

35.3 The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.

35.4 In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable Subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).

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

ARTICLE 36. CONFIDENTIALITY

36.1 All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its Subcontractors in the course of the performance of such Services, or the results of such Services, or for which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, Subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, Subcontractors, or suppliers may sell, transfer, publish, disclose, display, license or

otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state, or local law in regard to the privacy of individuals.

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

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

ARTICLE 37. PROPRIETARY INFORMATION

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

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

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

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

ARTICLE 38. PROPRIETARY RIGHTS

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

38.2 All Developed Works shall become the property of the County.

- 38.3 Accordingly, neither the Contractor nor its employees, agents, Subcontractors, or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced, or distributed by or on behalf of the Contractor, or any employee, agent, Subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- 38.4 Notwithstanding anything to the contrary herein, the Contractor and its Subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Application Software (including the Services) and other Licensed Software provided hereunder. In the event of an Event of Default (as defined below in Article 24) and the Contractor fails to cure said Event of Default (as delineated below in Article 25), the Contractor hereby grants, and shall require that its Subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Application Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Application Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County.
- 38.5 County may not make copies of the Application Software except for backup, archival, emergency recovery purposes or to replace a worn copy. If this Agreement is terminated, all such copies must be destroyed and the Application Software returned to the Contractor.
- 38.6 County agrees that it will not and it will not allow others to reverse engineer, disassemble, de-compile or in any way tamper with the Application Software.
- 38.7 County shall take all reasonable steps to ensure that all Application Software, in whatever form, and all documents relating thereto, are held in confidence by County, its employees and consultants and are not disclosed or made available to any third party not licensed by the Contractor, without the prior written consent of the Contractor. County shall instruct in writing all parties having access to the Application Software of their obligations under this Article.

ARTICLE 39. VENDOR REGISTRATION/CONFLICT OF INTEREST

39.1 Vendor Registration

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

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

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

1. ***Miami-Dade County Ownership Disclosure Affidavit***
(Section 2-8.1 of the Code of Miami-Dade County)
2. ***Miami-Dade County Employment Disclosure Affidavit***
(Section 2.8.1(d)(2) of the Code of Miami-Dade County)

3. **Miami-Dade County Employment Drug-free Workplace Certification**
(Section 2-8.1.2(b) of the Code of Miami-Dade County)
4. **Miami-Dade County Disability and Nondiscrimination Affidavit**
(Section 2-8.1.5 of the Code of Miami-Dade County)
5. **Miami-Dade County Debarment Disclosure Affidavit**
(Section 10.38 of the Code of Miami-Dade County)
6. **Miami-Dade County Vendor Obligation to County Affidavit**
(Section 2-8.1 of the Code of Miami-Dade County)
7. **Miami-Dade County Code of Business Ethics Affidavit**
(Article I, Section 2-8.1(i) of the Code of Miami-Dade County)
8. **Miami-Dade County Family Leave Affidavit**
(Article V of Chapter 11 of the Code of Miami-Dade County)
9. **Miami-Dade County Living Wage Affidavit**
(Section 2-8.9 of the Code of Miami-Dade County)
10. **Miami-Dade County Domestic Leave and Reporting Affidavit** (Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)
11. **Miami-Dade County Verification of Employment Eligibility (E-Verify) Affidavit**
(Section 448.095, of the Florida State Statutes)
12. **Miami-Dade County Pay Parity Affidavit**
(Resolution No. R-1072-17)
13. **Miami-Dade County Suspected Workers' Compensation Fraud Affidavit**
(Resolution No. R-919-18)
14. **Office of the Inspector General**
(Section 2-1076 of the Code of Miami-Dade County)
15. **Small Business Enterprises**
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.
16. **Antitrust Laws**
By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

39.2 Conflict of Interest and Code of Ethics

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

ARTICLE 40. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

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

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts. The cost of the audit for this Contract shall be one quarter of one percent (0.25%) of the total Contract amount which cost shall be included in the total Contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all Contract renewals and extensions.

Exception: The above application of one quarter of one percent (0.25%) fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Board; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Implementing Order No. 3-38; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter of one percent (0.25%) in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present, and proposed County and Trust contracts, transactions, accounts, records, and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications, and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of IPSIGs to audit, investigate, monitor, oversee, inspect, and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

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

ARTICLE 41. FEDERAL, STATE, AND LOCAL COMPLIANCE REQUIREMENTS

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

- a) Equal Employment Opportunity clause provided under 41 C.F.R. Part 60-1.3 in accordance with Executive Order 11246, "Equal Employment Opportunity", as amended.
- b) Miami-Dade County Small Business Enterprises Development Participation Provisions.
- c) The Clean Air Act (42 U.S.C. § 7401-7671q.) and the Federal Water Pollution Contract Act (33 U.S.C. §§ 1251-1387), as amended.
- d) The Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by the Department of Labor regulations (29 C.F.R. Part 5).
- e) The Copeland "Anti-Kickback" Act (40 U.S.C. § 3145) as supplemented by the Department of Labor regulations (29 C.F.R. Part 2).
- f) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics".
- g) Section 10-38 of the Code of Miami-Dade County, "Debarment of Contractors from County Work".
- h) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave".
- i) Section 21-255 of the Code of Miami-Dade County, prohibiting the presentation, maintenance, or prosecution of false or

fraudulent claims against Miami-Dade County.

- j) The Equal Pay Act of 1963, as amended (29 U.S.C. § 206(d)).
- k) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited".
- l) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 *et seq.*) "Discrimination".
- m) Chapter 22 of the Code of Miami-Dade County (§ 22-1 *et seq.*) "Wage Theft".
- n) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 *et seq.*) "Business Regulations".
- o) Any other laws prohibiting wage rate discrimination based on sex.
- p) Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).
- q) Executive Order 12549 "Debarment and Suspension", which stipulates that no contract(s) are "to be awarded at any tier or to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs".
- r) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07) and regulations issued pursuant thereto (24 C.F.R. Part 146).

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

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

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

ARTICLE 42. NONDISCRIMINATION

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

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

ARTICLE 43. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of

the aforesaid has directly or indirectly received or been promised any form of benefit, payment, or compensation, whether tangible or intangible, in connection with the award of this Agreement.

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

ARTICLE 44. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

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

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

ARTICLE 45. BANKRUPTCY

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

ARTICLE 46. GOVERNING LAW

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

ARTICLE 47. COUNTY USER ACCESS PROGRAM (UAP)**a) User Access Fee**

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

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

b) Joint Purchase

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

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

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

c) Contractor Compliance

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

ARTICLE 48. INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES AND FORMER MEMBERS, OFFICERS OR EMPLOYEES

No member, officer, or employee of the County, no member of the governing body of the locality in which the Project is situated, no member of the governing body in which the County was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.

ARTICLE 49. LIENS

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

ARTICLE 50. FIRST SOURCE HIRING REFERRAL PROGRAM

Pursuant to Section 2-2113 of the Code, for all contracts for goods and services, the Contractor, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify Career Source South Florida ("CSSF"), the designated Referral Agency, of the vacancy and list the vacancy with CSSF according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the CSSF. If no suitable candidates can be employed after a

Referral Period of three to five days, the Contractor is free to fill its vacancies from other sources. Contractor will be required to provide quarterly reports to the CSSF indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of Contract until Contractor performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of \$1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the First Source Hiring Referral Program are available at <https://iapps.careersourcesfl.com/firstsource/>.

ARTICLE 51. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The Contractor shall comply with the Public Records Laws, including by not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the Contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

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

ARTICLE 52. VERIFICATION OF EMPLOYMENT ELIGIBILITY (E-VERIFY)

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

ARTICLE 53. SURVIVAL

The Parties acknowledge that any of the obligations in this Agreement will survive the term, termination, and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation, or expiration thereof, shall survive termination, cancellation or expiration hereof.

ARTICLE 54. FORCE MAJEURE

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

ARTICLE 55. PERSONALLY IDENTIFIABLE INFORMATION (PII)

Contractor will comply fully with all applicable laws, regulations, and government orders relating to personally identifiable information ("PII") and data privacy with respect to any such data that Contractor receives or has access to under this Agreement or in connection with the performance of any services for the County. Contractor will otherwise protect PII and will not use, disclose, or transfer across borders such PII except as necessary to perform under this Agreement or as authorized by the data subject or in accordance with applicable law. To the extent that Contractor receives PII related to the performance of the Agreement, Contractor will protect the privacy and legal rights of County personnel, clients, customers and contractors.

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

Contractor

Miami-Dade County

By: _____

By: _____

Name: _____

Name: Daniella Levine Cava

Title: _____

Title: Mayor

Date: _____

Date: _____

Attest: _____

Attest: _____

Corporate Secretary/Notary Public

Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form
and legal sufficiency

Assistant County Attorney

APPENDIX A – SCOPE OF SERVICES**Software Maintenance Agreement**

Contractor will provide standard support to the County as outlined below. The County will alert Contractor of support issues through the Zendesk Ticket Portal system or via phone at (800) 349-0575. Standard support is available Monday through Friday 8am-8pm Eastern Time, excluding holidays:

- Technical troubleshooting and assistance with Application Software in order to restore the Application Software's functionality to its operational condition prior to any known errors and to comply with related published Documentation, the current published software manuals and HUD Mandated Changes.
- Corrections of errors, interruptions, malfunctions or defects in the Application Software to enable the Application Software to substantially conform to published Documentation.
- Assistance with errors caused by routine Software Fixes or Enhancements that are correctly installed, as directed in writing by Contractor.

Service Level Agreement

Front Line Support - Severity			SLA	
Level	Support Request Classification	Description: Any Service Error Comprising or Causing any of the Following Events or Effects	Initial Response	Incident Resolution
1	Urgent Service Error	<ul style="list-style-type: none"> • Issue affecting entire system or single critical production function; • System down or operating in materially degraded state; • Data integrity at risk; • Declared a Critical Support Request by the State; or • Widespread access interruptions. 	1 hour	Issue will be worked on until resolution is found.
2	High Service Error	<ul style="list-style-type: none"> • Primary component failure that materially impairs its performance; or • Data entry or access is materially impaired on a limited basis. 	4 hours	Issue will be worked on until resolution is found.
3	Normal Service Error	<ul style="list-style-type: none"> • Hosted Service is operating with minor issues that can be addressed with an acceptable (as determined by the agency) temporary work around. • Request for assistance, information, or services that are routine in nature 	24 hours	Issue will be worked on until resolution is found.

Escalation Procedure

Contractor and the County will manage, track, and work to resolve project and software issues, decisions, and action items. In the event of a resolution conflict on an issue, decision, and/or action item, the Executive Director, or his delegate, from the County and the CEO, or his delegate, from Contractor will have authority for the final decision to resolve the conflict.

Support Tickets are created to track all software issues and can be escalated through your Customer Care Account Representative, via email or phone at (800) 968-6884. If further escalation is required, Jessica Toledano, Director of Customer Care can be reached via

phone (305) 503-6624 or email jtoledano@emphasys-software.com. All tickets are tracked upon receipt, with acknowledgement of the ticket sent to the client upon creation as well as upon closure of all tickets.

Software Updates

Contractor releases maintenance updates typically on a quarterly basis. Tax/legislative updates come out by the end of each calendar year. Upgrades and updates are released as Service Packs that are available for download from our secure website, and an email is sent out to clients as soon as they become available. Contractor supports the current version and one prior release and encourages clients to be up-to-date on current releases.

Content for maintenance releases are determined in the following priority order:

1. HUD/Government/Tax compliance regulatory changes
2. Bug/Fixes
3. Customizations (Client paid rolled into general release)
4. Free Enhancements

APPENDIX B – PRICE SCHEDULE

Module Abbrev.	Modules:	2022	2023	2024
Accounting 1:				
AP	Accounts Payable			
BR	Bank Reconciliation			
GL	General Ledger			
IC	Material Inventory			
Accounting 2:				
FA	Fixed Assets			
PO	Purchase Order			
Accounting 3:				
EM	Equipment Maintenance			
TOTAL ACCOUNTING:		\$ 101,292.79	\$ 106,357.43	\$ 111,675.30
Payroll:		\$ 24,310.27	\$ 25,525.78	\$ 26,802.07
PR	Payroll			
Housing 1:				
	Tenant Accounts Receivable (Low Income			
LIPH	Public Housing)			
WO	Maintenance Work Order			
Housing 2:				
S8	Section 8, HQS Host & HH, RR			
TOTAL HOUSING:		\$ 94,539.94	\$ 99,266.94	\$ 104,230.28
WebApp	Web Application Installed 5/28/08	\$ 26,319.63	\$ 27,635.31	\$ 29,017.39
PP	Partner Portal Install 10/2/09 (Eff Nov 1, 2009)	\$ 23,895.44	\$ 25,090.21	\$ 26,344.72
UPCS HOST	UPCS Host Software per install 7/9/15 for the period 8/1-9/30/15*	\$ 10,801.56	\$ 11,341.64	\$ 11,908.72
UPCS Mobile	for the period 8/1-9/30/15*	\$ 3,629.32	\$ 3,810.79	\$ 4,001.33
Hosting:				
Portal Hosting	My Hosuing WebApp - Install May 2020	\$ 1,984.50	\$ 2,083.73	\$ 2,187.91
Total Emphasys Annual Support:		\$ 286,773.50	\$ 301,112.17	\$ 316,167.78
UNIDATA	20 each SBR, Unidata & Wintegrate eff 9/	\$ 7,183.28	\$ 7,542.45	\$ 7,919.57
Grand Total		\$ 293,956.78	\$ 308,654.62	\$ 324,087.35

September Renewal	Elite Link to Budget Maestro Open Link			
Elite Link to	Interface			
Budget Maestro Open Link	SMA - Due at Install			
		\$ 1,102.50	\$ 1,157.63	\$ 1,215.51
Budget Maestro - Third Party Advanced Budgeting Solution	Budget Maestro - Updated Pricing to be provided by Centrage 60 days prior to renewal in September	TBD	TBD	TBD

*These fees are payable annually in advance on the later of the date the Licensed Program/s is available by Contractor and the date of this Agreement and then upon each anniversary of such date.

Where required hourly rates for labor shall be as follows

Description	Price
Training	\$155 plus travel expenses
Project Management	\$155
Consulting	\$194 plus travel expenses
Data Conversion	\$225
Network Engineering	\$225
Custom Programing	\$225
System Analysis / Spec Writing	\$225
Billable Support Events	\$155-\$225
Software Installation	\$225