

ISSUING DEPARTMENT INPUT DOCUMENT

CONTRACT/PROJECT MEASURE ANALYSIS AND RECOMMENDATION

New
 OTR
 Sole Source
 Bid Waiver
 Emergency
 Previous Contract/Project No. BW8255-0/12

Re-Bid
 Other – Access of Other Entity Contract
 LIVING WAGE APPLIES: YES NO

Requisition No./Project No.: RQET1900020
 TERM OF CONTRACT 3 YEAR(S) WITH 0 YEAR(S) OTR

Requisition /Project Title: CA IDMS Software Licensing and Maintenance Support Services

Description: Approval of a legacy purchase is being requested, pursuant to Section 2-8.1(b)(2) of the Miami-Dade County Code. This contract will provide the County with software licenses and associated maintenance and support services for the Integrated Database Management System

Issuing Department: ITD
 Contact Person: Mirta Cardoso
 Phone: 3055968690

Estimate Cost: \$4,800,000

Funding Source:
 GENERAL
 FEDERAL
 OTHER Internal Serv

ANALYSIS

Commodity Codes: 20554

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:			
Small Business Enterprise:			
Contract Value:			
Comments: 			

Continued on another page (s): YES NO

RECOMMENDATIONS

	Set-Aside	Subcontractor Goal	Bid Preference	Selection Factor
SBE				

Basis of Recommendation:

Signed: Caroline Burgos
 Date sent to SBD: 6/20/2019

Date returned to SPD:

CA, Inc. Master Software, Services and Maintenance Support Agreement

County Contract #: TBD
Contractor Contract #: 62950

THIS AGREEMENT made and entered into by and between CA, Inc., a corporation organized and existing under the laws of the State of Delaware, having its principal office at One CA Plaza, Islandia, NY 11749 (hereinafter referred to as the "Contractor" or "CA"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide products and services in accordance with the terms and conditions established herein and further supplemented in Appendix D (Licensing Terms and Conditions), by executing separate Orders and statements of in a form and format approved by the parties, and all associated addenda and attachments, incorporated herein by reference; and,

WHEREAS, the County desires to procure from the Contractor products and services for the County, in accordance with the terms and conditions of this Agreement;

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

ARTICLE 1. DEFINITIONS

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

- a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, and all Appendixes hereto, and all other attachments hereto and all amendments issued hereto.
- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative.
- d) The words "Contract Specialist" to mean the County and the Contractor contract liaison assigned to this Contract.
- e) The word "Contractor" or "CA" to mean CA, Inc. and its permitted successors and assigns.

- f) The word "Days" to mean Calendar Days.
- g) The words "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 County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words "Change Order" or "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- i) The words "Confidential Information" to mean any information, maintained in confidence by the disclosing party, communicated in written or oral form, marked as proprietary, confidential or otherwise so identified, and/or any information that by its form, nature, content or mode of transmission would be deemed confidential or proprietary. Licensed Programs and Documentation are Confidential Information to the extent deemed confidential under Florida Public Records laws.
- j) The word "Documentation" to mean the CA standard technical user manuals provided with the Licensed Programs.
- k) The words "Licensed Program" to mean the computer software programs licensed by CA to County hereunder.
- l) The word "Perpetual" to mean the right to use the Licensed Program for an indefinite period of time upon payment of the one-time license fee. If the licensee desires maintenance and enhancement services, an additional annual maintenance fee is required. Continued usage of the licensed products on the same terms does not require payment of an additional fee, but continued maintenance is subject to payment of CA's then prevailing annual maintenance fee.
- m) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Contract.
- n) The word "Order" to mean any subsequent or future order forms executed separate from this Agreement in the form and format approved by Contractor.
- o) The words "Statement of Work" ("SOW") to mean the separate document which details the work to be performed by the Contractor.
- p) 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.
- q) The word "Subscription" to mean the right to usage and maintenance of the Licensed Program during the term of the transaction document. Thereafter, the license automatically renews for the same period of time on the same terms and conditions, subject to the then prevailing subscription license fee upon the election of the County in writing.

- r) The word "Term" to mean the duration of the grant of license or other obligation(s) as set forth in an applicable Order.
- s) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract as it relates to a particular SOW.
- t) The words "Work Product" means all items produced for the County's use under an SOW.
- u) The word "UMF" to mean the right to usage and maintenance of the Licensed Program during the term of the agreement. Thereafter, the license automatically renews on the same terms and conditions, subject to an annual usage and maintenance fee (UMF) upon the election of the County in writing. Without payment of the UMF, the license will terminate after expiration of the initial term, and the County must remove and destroy all copies of the product.

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) these terms and conditions and any Appendixes hereto in descending order; and 2) the applicable SOW or Order unless the applicable term and condition of the Agreement is expressly substituted for in the respective SOW or Order. Any terms and conditions contained on any purchase order or other standard pre-printed form issued by the County must be accepted in writing by CA to be effective.

ARTICLE 3. RULES OF INTERPRETATION

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

ARTICLE 4. NATURE OF THE AGREEMENT

- a) The Contractor shall provide the services set forth in an SOW pursuant to the applicable Order and this Agreement as set forth in Article 2. .
- b) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Services under this Contract. All things not expressly mentioned in this Agreement but reasonably necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same so long as any actions the County must take to allow Contractor to perform have been completed.

- c) Unless otherwise provided in an order, the Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Services. All Services shall be accomplished in accordance with directions of the County's Project Manager provided such directions are within the general scope of the purchase order and/or Vendor Scope Document to which the directions relate.
- d) The Contractor agrees to use commercially reasonable efforts to implement any and all changes in providing Services hereunder as a result of a change in laws, regulations, or similar authorities that govern performance of this Contract. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding increases in time and cost or pricing caused by such changes. The parties shall mutually agree in writing to any adjustments to schedule or increase in price caused by such changes.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective on the date of parties' signature, whichever is later and shall continue through the last day of the thirty-sixth (36) month following the effective date. The County reserves the right to exercise its option to extend this Contract for up to 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.

ARTICLE 6. NOTICE REQUIREMENTS

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

(1) to the County

- a) to the Project Manager:

Miami-Dade County
Attention:
Phone: (305)
Fax: (305)

and,

- b) to the Contract Manager:

Miami-Dade County
Strategic Procurement Division
111 N.W. 1st Street, Suite 1300
Miami, FL 33128-1974
Attention: Chief Procurement Officer
Phone: (305) 375-4900
E-mail: uppaln@miamidade.gov

(2) To the Contractor

- a) (Services and Software Related Notices)
CA, Inc.
2291 Wood Oak Dr

Herndon, VA 20171-2823
Attention: Rene Hruska
Copy to : Public Sector Legal Team
CA, Inc.
2291 Wood Oak Drive, Herndon, VA 20171

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 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and will ask such questions and conduct such other inquiries as the Contractor deems necessary in order to determine the price the Contractor will charge to provide the Work and Services or software to be provided under this Contract. The compensation for all Work and Services or software provided under this Contract, shall be as stated in the applicable SOW or Order. 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, SOW or Order which is approved and executed in writing by the County and the Contractor, exclusive of any applicable taxes.

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

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

ARTICLE 8. PRICING

Prices shall be as stated in the applicable SOW or Order, and any option or extension periods shall be priced as specifically stated or are otherwise priced according to Contractor's commercial list prices and/or commercial list rates, as applicable, whichever is lower. In addition the Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof.

ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor ~~other than travel costs and expenses covered by Article 7 above,~~ which are directly attributable or properly allocable to the Services, the Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor pursuant to ~~Appendix A, an~~ Order Form ~~or any subsequent Order.~~ All ~~cost or expense items in~~ invoices ~~shall be taken from the books of account kept by the Contractor,~~ shall be supported by copies of ~~payroll distribution, receipts, bills or other documents~~ ~~ordinarily received by purchasers of goods and services~~ reasonably required by the County, ~~s shall~~ 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 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, ~~t~~ the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. Billings from prime Contractors under services and goods contracts with the County or Public Health Trust, that are Small

Commented [BC(1)]: Deletion / Change not accepted

Commented [TS2R1]: CA had a concern that agreeing to what's "reasonably required" could introduce risk of not getting appropriate expenses reimbursed because we don't know what kind of documentation besides receipts that we would have to verify expenses. Please consider whether our proposed edit is acceptable to the County.

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 of Miami-Dade. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one and one-half percent (1.5%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded in accordance with Section 2-8.1.4(6)(b) of the Code of Miami-Dade County. by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

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

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

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

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

ARTICLE 10. 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, but only for claims in connection with which CA's alleged liability is based on gross negligence, willful misconduct, or knowing breach of this Agreement. 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.

During the term of this Agreement, Contractor's parent company Broadcom Inc., including any of its subsidiaries, will maintain in effect, either by purchase of the insurance noted below or, in lieu of purchasing such insurance, will maintain through a self-insured/self-funded retention or program, no less than the minimum levels of coverage referenced below as approved by the County in writing prior to the effective date of the Agreement.

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Commented [TS4R3]: CA is only willing to agree to indemnify the County (and all CA's customers) for liability that arises as a result of some greater culpability than ordinary negligence or a technical, but non-material, failure to comply with contract requirements. Ordinary damages are still available for less culpable actions or omissions that give rise to liability. In order to get the agreement in a form we can approve, but still capture more of the scope of liability-generating conduct the County wants included, we added "knowing breaches" this agreement, and we hope that compromise is acceptable to the County.

Commented [BC(5): Send to Risk

Commented [TS6R5]: Per our discussion on 5/31, CA has requested an insurance certificate. The certificate will reflect our "best and final offer" on insurance, and the County will have to accept that we self-insure for any risks outside the coverage described in the statute in order for this contract to be finalized and executed. We don't want to sound like we're making some type of ultimatum, but we do want to be transparent about what our management will and won't accept.

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

- ~~1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.~~
- ~~2. Public Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **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 used in connection with the Services, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.~~
- ~~4. Professional Liability Insurance in an amount not less than \$5,000,000 and Contractor will be responsible any deductibles or self insured retentions.~~

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

OR

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

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

~~Miami-Dade County
111 N.W. 1st Street
Suite 1300
Miami, Florida 33128-1974~~

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

~~The Contractor shall provide insurance certificates within ten (10) business days of the effective date of this Contract. If the insurance certificate is received within the specified timeframe but not in the manner prescribed in this Agreement, the Contractor shall have an additional five (5) business days from the date the County notifies Contractor that the insurance certificate is insufficient to submit a corrected certificate to the County. If Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement, Contractor shall be in default of the contractual terms and conditions, unless such timeframe for submission has been extended by the County.~~

~~The Contractor shall assure that the Certificates of Insurance required in conjunction with this Section remain in full force for the term of the Contract, including any renewal or extension periods that may be exercised by the County. If the Certificate(s) of Insurance is scheduled to expire during the term of the Contract, the Contractor shall submit new~~

~~or renewed Certificate(s) of Insurance to the County a minimum of ten (10) calendar days after such expiration. In the event that expired Certificates of Insurance are not replaced or renewed to cover the Contract period, the County may suspend the Contract until the new or renewed certificates are received by the County in the manner prescribed herein. If such suspension exceeds thirty (30) calendar days, the County may, at its sole discretion, terminate the Contract for cause pursuant to Article 23.~~

Commented [BC(7)]: Cannot strike

ARTICLE 11. MANNER OF PERFORMANCE

a) The Contractor shall provide the Services 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 Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services.~~ At the request of the County, the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder at Contractor's direction. County shall not request the removal of any person unless County has a good faith and objectively reasonable belief that the person has failed to meet the requirements of this Agreement or has failed to comport themselves in a professional manner. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor, ~~though this Agreement shall not limit or otherwise affect Contractor's rights or discretion to take any actions that relate to any employees.~~

Commented [BC(8)]: language added

b) ~~The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's 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, conduct of a Contractor employee, subcontractor, or any other persons performing services hereunder at Contractor's direction that fails to meet reasonable standards of professional conduct in the workplace, 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.

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c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. 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, which said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.~~

Commented [TS10R9]: The way we read the original version of this paragraph, it creates a sweeping exception to any limitation on indemnification obligations under Article 10. Since the County just rejected our proposed deletion, we've suggested an edit to capture what the County really seems to be going after.

~~d) 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 Services described herein, in a competent and professional manner.~~

ed) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.

e) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor and any subcontractors shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. ~~Miami-Dade County may require the Contractor to remove an employee it deems careless,~~

~~incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County.~~ Each employee shall have and wear proper identification.

ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

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

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

ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

a) ~~The Contractor hereby acknowledges that the County's Project Manager will determine~~ from the County's perspective, 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 ~~(although this Article 14 does not create any inspection and acceptance procedure or establish any prerequisite to payment to the Contractor); questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal;~~ questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.

Commented [BC(11)]: Updated by the County.

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

Commented [TS12]: CA has to insist that, other than limited unilateral changes we've accepted elsewhere, any changes must be implemented through a mutually agreed written modification.

e)b) ~~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.

e)c) ~~In the event of such dispute, the parties to this Agreement 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 parties. Any such dispute shall be brought, if at all, before the County Mayor within 10 days of the occurrence, event or act out of which the dispute arises. Section 2-8.1.4(6)(b) of the Code of Miami-Dade County shall govern.~~

e)d) ~~The County Mayor may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether 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 in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Mayor is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Mayor, as appropriate, shall render a decision in writing and deliver a copy of the same to 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. Nothing in Article 14 shall impair a party's right to seek immediate equitable relief from any court of competent jurisdiction in the event that a violation of the confidentiality terms of this Agreement, infringement of a party's intellectual property rights, or a violation of the scope of a software license is occurring or imminent.~~

ARTICLE 15. MUTUAL OBLIGATIONS

- a) 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 both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on 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 costs from the Contractor.~~

ARTICLE 16. 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 Scope of Services, but only to the extent that Contractor maintains such records in the ordinary course of its business. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 17. AUDITS

The Contractor agrees that the County or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine any of the Contractor's books, documents, papers and records associated with a specific SOW. Any such audit will be conducted upon reasonable notice to Contractor and as not to disrupt Contractor's daily business activities. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, and shall only address those transactions related to this Agreement. Any such audit will be in accordance with Contractor's standard security procedures.

The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate commercially reasonable documentation, and adequate procedures for determining the allowability and allocability of charges under a particular SOW.

Commented [TS13]: As discussed on 5.31.19, a condition of CA's agreement to indemnify a customer is that CA must control any decisions about litigation or settlement. Certainly, if the County may elect to represent itself, and seek to implead or recover any damages to which the County is entitled from CA, but CA isn't willing to indemnify customers for any and all dispute resolution courses a customer pursues, because the customer wouldn't have a strong incentive to limit legal fees to what's absolutely necessary. We also proposed to remove the "failure to diligently defend" as it implies that CA agrees that if the County exercises its right to control the defense or settlement then CA has, per se, failed to diligently defend and what exactly constitutes "diligent" defense is very subjective.

Commented [TS14]: While CA is confident that our accounting systems and records are more than sufficient to achieve the aim of this term for all practical purposes, we cannot agree to terms where the standard we agree to meet is the vague and subjective "adequate."

ARTICLE 18. SUBSTITUTION OF PERSONNEL

~~In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's SOW, 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.~~**RESERVED.**

ARTICLE 19. ASSIGNMENT

Neither party shall assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the other party. Notwithstanding the foregoing, Contractor shall have the right to assign this Agreement to the purchaser of all or substantially all of the assets of Contractor to Contractor's successor by merger or otherwise by operation of law. This Agreement shall be binding upon the respective successors and assigns of the Contractor or County. The Contractor understands that an assignment made pursuant to this paragraph which results in a differing Tax Identification Number for the assignee will require the assignee to undergo the County's vendor registration process prior to the completion of such assignment.

ARTICLE 20. SUBCONTRACTUAL RELATIONS

- a) If the Contractor will cause 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 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.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services 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. County shall not withhold approval of any Subcontractor unless County has a good faith objectively reasonable belief that Subcontractor cannot perform the work to be subcontracted in accordance with the terms of this Agreement or otherwise lacks the necessary responsibility to work on a County project.
- c) 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 Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this ~~Contract Agreement~~**Agreement**.
- d) ~~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 Services 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 services of the same general type which is required to be performed under this Agreement.~~
- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. The County shall only exercise this right to the extent its belief that the subcontract

Commented [TS15]: CA is not willing to agree to this term (and the term in subsection "e") unless other terms making CA responsible for Subcontractor's performance are removed. This qualification requirement has the potential to cripple CA's ability to line up any subcontractors it needs to use in a timely manner and it's unclear why this term is necessary in light of how the rest of this agreement makes CA fully accountable for its subcontractor's meeting, or failure to meet, contract requirements.

will impair performance is based on a good faith assessment of factual information and County delivers to CA a written statement documenting the facts on which the County's belief is based. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations and has terminated the prime contract, the option 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.

Commented [BC(16)]: Change not accepted

ARTICLE 21. 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. Notwithstanding the foregoing the County understands that changes to any of the above identified information that were used as a basis for the development of a particular SOW may result in changes required to the scope and fees associated with the SOW in question. RESERVED.

Commented [TS17R16]: CA remains uncomfortable with the subjective standard that governs the County's right to withdraw consent to a subcontract. We've proposed some edits to try to find a compromise that works for both parties.

ARTICLE 22. 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.

Commented [TS18]: CA statements of work for services always contain a number of assumptions that represent conditions outside of CA's control, but within a customer's control, that are essential for successful performance of a contract. This term would essentially remove any County accountability for taking care of the things it must attend to in order for a services engagement to have any chance of success. CA can certainly accept this language as long as something makes it clear that any assumptions expressly stated in an SOW are not covered by this clause. When we talk about SOW "assumptions," that means very standard things like the assumption the customer will be able to provide us access to a facility where we need to do work, assumption that any licenses or fees that need to be paid for the customer to have the right to use machines where we are implementing software, etc.

ARTICLE 23. TERMINATION AND SUSPENSION OF WORK

- a) The County may terminate this Agreement if ~~an individual or corporation or other entity~~ Contractor or any person or entity acting on behalf of Contractor who has been granted any access to County systems or facilities by presenting credentials obtained in accordance with this Agreement with Contractor's knowledge and consent attempts to meet its contractual obligation ~~with to~~ the County under this Agreement through fraud, misrepresentation or material misstatement.
- b) The County may, as a further sanction, terminate or cancel any other contract(s) that ~~such an~~ individual or corporation or other entity committing an act described in subsection "(a)" immediately above has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the Code of Miami-Dade County.
- d) In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement ~~by written notice to the Contractor in whole or in part together with each and all SOWs and Orders in effect as of the date of~~

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Commented [BC(19)]:
Change not accepted

Commented [TS20R19]: CA's only goal here is to account for the possibility that some unauthorized person gets access to facilities or systems they shouldn't have access to just because he or she says he or she is affiliated with CA and make it clear that CA is not liable for damages someone like that causes. Please consider our further edits to this paragraph – basically, we don't think CA should be responsible if an unauthorized person acting without our knowledge improperly obtains access to a County system or facility just because that person purports to be a CA employee or subcontractor.

termination (collectively, the Agreement), without cause and without further charge or expense at any time, immediately upon written notice to Contractor sent to usagereporting@ca.com. On or after the termination date, County must either: a) delete all full or partial copies of the Licensed Program from all computing or storage equipment and verify such deletion in a statement signed by a duly authorized representative and sent to usagereporting@ca.com, or b) return to Contractor all full or partial copies of the Licensed Program. Once County's verification or the Licensed Program copies are received, Contractor will pay County a pro-rata refund of any fees County pre-paid (Refund Fees) in accordance with the paragraph below. Refund Fees will be calculated on the number of months remaining in the Term of the applicable SOW or Order. If the Licensed Program is licensed under a Perpetual License, County will receive a pro-rated refund of the License Fee only if notice of termination is issued during the initial Term of the applicable SOW or Order. If the Agreement is terminated without cause, neither party shall have further obligations under the Agreement, except that the parties shall remain bound by the Confidentiality obligations in the Agreement, Refund Fees will be paid within sixty (60) days from the termination date, and any unpaid fees reflecting the Services (defined as software license, maintenance and professional services for purposes of this section) delivered prior to the termination date plus any reasonable charges having resulted from the termination shall become immediately due.

- e) 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 commercially reasonable action as may be necessary for the protection and preservation of the County's materials and property;
 - iii. cancel orders;
 - iv. use commercially reasonable efforts to assign to the County and, provided County has agreed in writing to compensate Contractor for costs, 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~~ commercially reasonable actions to minimize the amounts payable by the County under this Agreement; and
- f) 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, whether complete or incomplete, 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.
- g) All compensation pursuant to this Article are subject to audit.

ARTICLE 24. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing, and in addition to those instances referred to herein as a breach, an Event of Default shall include the following:
 - i. the Contractor has not delivered Deliverables on a timely basis;
 - ii. the Contractor has refused or failed to supply enough properly skilled staff personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection b below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.

~~b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services 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 Services 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 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 Services or any part thereof either by itself or through others.~~

~~In the event the County shall terminate this Agreement for default, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.~~

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs in the determination of the County, the County may so notify the Contractor ("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 Services upon the Termination Date.

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all ~~direct~~ damages resulting from the default, including

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Commented [TS21]: "Assurances" could mean a variety of different things as used in this paragraph, and having a right to adjust prices until adequate assurances are provided introduces more uncertainty and financial risk than CA can accept.

Commented [BC(22): Change not accepted

Commented [TS23R22]: CA and the County are not in agreement on this point. It is highly uncommon in our industry for a vendor to accept liability for consequential damages, including lost revenues, though we appreciate the County agreeing to delete procurement costs. We suggest that the County describe exactly what lost revenues it believes could occur in the context of services that CA provides and we can seek approval to accept liability for those specific damages.

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but not limited to:

- a) lost revenues;
- a) ~~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~~
- b) 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 27. FORCE MAJEURE

- a) 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.
- b) In the event of any delay resulting from such causes, and provided the affected party has promptly notified the other and exercised commercially reasonable efforts as provided in subsection a) above the time for performance under this Agreement (including the payment of monies) shall be extended for a period of time reasonably necessary to overcome the effect of such delay.

ARTICLE 28. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor warrants the products provided hereunder, to its knowledge, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.
- b) ~~Contractor will indemnify, defend and/or, at its option, settle any third party claims that CustomerCounty's use of the specific Contractor Offering licensed or purchased by County under this Agreement infringes any valid US patent or copyright within the jurisdictions where County is authorized to use the Contractor Offering at the time of delivery. 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 Work Product 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 and /or, at its option settle any third party claims brought against the County with respect to any claim, demand, cause of action, debt, or liability.~~

- c) In the event any Work Product 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 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), or (iii) ~~provide a prorated refund of the fees paid for the Contractor Offering which gave rise to the indemnity calculated against the remainder of the Term from the date it is established that Contractor is notified of the third Party claim. If the Contractor Offering is Contractor software, and is licensed on a perpetual basis, an amortization schedule of three (3) years shall be used for the basis of the refund calculation.~~ provide a refund of the services fees paid for the infringing Work Product. These indemnifications are contingent upon: (i) County providing prompt notice of any claim of infringement and assistance in the defense thereof, (ii) Contractor's sole right to control the defense or settlement of any such claim, provided that the settlement does not require a payment or admission of liability on the part of the County, and (iii) the County not taking any actions or failing to take actions that hinder the defense or settlement process as reasonably directed by Contractor. CA shall have no liability: (i) in the event the allegation of infringement is a result of a modification of the CA Offering except a modification by CA, (ii) if the CA Offering is not being used in accordance with CA's specifications, related documentation and guidelines, (iii) if the alleged infringement would be avoided or otherwise eliminated by the use of a CA published update or patch, (iv) if the alleged infringement is a result of use of the CA Offerings in combination with any third Party product, or (v) if the applicable fees due for the specific Transaction Document have not been paid. The indemnifications contained herein shall not apply and CA shall have no liability in relation to any CA Offering produced by CA at the specific direction of the CountyCustomerCounty.
- d) ~~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 Work Product hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Work Product 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.~~
- e) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

~~— With respect to Licensed Programs:~~

- ~~f) —~~
- ~~f) i) Provided the County remains current on maintenance, the Contractor will defend and/or, at its option, settle any third party claims that CustomerCounty's use of the Licensed Program infringes any valid U.S. patent, copyright or trademark registered or otherwise perfected at the time of delivery of the applicable Licensed Program. CA may, at its option and expense: (i) procure for CustomerCounty the right to continue to use the Licensed Program; (ii) repair, modify or replace the Licensed Program so that it is no longer infringing; or (iii) provide a pro-rata refund of the license fees paid for the infringing product, calculated on the term of the applicable Order from the effective date thereof to the date of the termination.~~
- ~~f) —~~
- ~~f) ii) CA shall have no liability: (i) in the event the allegation of infringement is a result of a modification of the Licensed Program, (ii) if the Licensed Program is not being used in accordance with CA's published specifications, Documentation and guidelines, (iii) if the Licensed Program is no longer being supported, (iv) if the alleged infringement would be avoided or otherwise eliminated by the use of a CA published update or patch, (v) if the alleged infringement is a result of use of the CA Licensed Program in combination with any third party product, or (vi) if the applicable license or service fees have not been paid.~~

~~g) —~~
~~g) —~~ ~~iii) These indemnifications are contingent upon: (i) CustomerCounty providing prompt notice of any claim of infringement and assistance in the defense thereof, (ii) CA's sole right to control the defense or settlement of any such claim, provided that the settlement does not require a payment or admission of liability on the part of CustomerCounty, and (iii) CustomerCounty not taking any actions or failing to take actions that hinder the defense or settlement process as reasonably directed by CA.~~

~~g) —~~
g) The County shall indemnify, subject to the limitations of Florida State Statute 768.28, CA against any claim that any data, materials, items or information supplied to CA hereunder infringes any U.S. copyright, patent, trademark or trade secret, provided that: (i) CustomerCounty is provided prompt notice of any such claim, (ii) County is provided the sole authority to defend or settle such claim (and further provided that CA is not obligated to admit liability or expend funds in connection with any such defense or settlement) and (iii) CA may participate at its cost in any such settlement discussions or litigation to the extent that either may impact CA's ongoing business practices.

THE FOREGOING PROVISIONS STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF CONTRACTOR REGARDING CLAIMS OF INFRINGEMENT, AND THE EXCLUSIVE REMEDY AVAILABLE TO THE COUNTY WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS.

ARTICLE 29. CONFIDENTIALITY

a) ~~Other than derivative works of Contractor's proprietary software or other intellectual property developed at private expense, a~~ All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or 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, the confidentiality terms of this Agreement, caused by Contractor's gross negligence or willful misconduct.~~

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

c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. ~~Unless otherwise requested Upon request~~ by the County, ~~upon the completion of the Services performed hereunder,~~ the Contractor shall immediately turn over to the County ~~or, at Contractor's option, destroy~~ all

Commented [TS24]:

Commented [TS25]: CA's concern here is that the County could erroneously transmit or disclose information that impacts individuals' privacy rights to CA without proper markings or other precautions and CA might automatically be breaching privacy rights without realizing it. CA typically would refuse to provide this sort of broad indemnification for confidentiality breaches, but, in the interests of compromise, is willing to provide the indemnification, but only if it's a violation of the confidentiality measures CA has agreed to and not for any general violations of privacy rights that the County might have set in motion.

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Commented [BC(26)]: If we don't have copy this violates FL Statutes Chapter 119

Commented [TS27R26]: We understand and can meet that requirement. We just need our obligation to be triggered by the County's request since our ordinary default document retention policies just involve deleting confidential information on a regular basis rather than returning it to disclosing parties.

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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 ~~be provided to County~~ accompany such materials.

ARTICLE 30. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledge 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.

Commented [TS28]: CA proposes this change because CA software in county's possession isn't something CA has to refrain from disclosing. We see that it does say "may constitute," but we still prefer to remove "all" to be totally clear that at least some software in the County's possession is not proprietary information CA is required to keep confidential.

During the term of the contract, the contractors 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 (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their 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 any 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 31. PROPRIETARY RIGHTS

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of 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.
- b) Contractor shall retain all right, title, copyright, patent, trademark, trade secret and all other proprietary interests to all Contractor intellectual property and any derivatives thereof. The County may not distribute, promote, or otherwise use any such information or materials relating to Services for any external use without the express prior written consent of Contractor or as otherwise specifically permitted. No title, copyright, patent, trademark, trade secret or other right of intellectual property not expressly granted hereunder is exchanged between the parties. Contractor retains all rights to the Work Product delivered hereunder and the County acknowledges and agrees that it obtains no rights to such Work Product as a "work made for hire" as that term is defined in Section 101 of the United States Copyright Act or any comparable provision

under the laws of the State of Florida. Contractor grants the County a non-exclusive, non-transferable license to use the Work Product subject to the terms herein and the applicable license agreement. For custom code application development work unique to the County and void of Contractor's proprietary computer software programs and other intellectual property, including any derivatives or extensions thereof, the County may own all tangible and intangible property, technical notes and work products delivered and/or produced or created by Contractor in connection with such Services provided such work is expressly identified as custom code application development work in the relevant statement of work, purchase order, or other transaction document pursuant to which the work is performed. Contractor acknowledges that any such copyrightable works prepared by Contractor may be deemed "works made for hire" for the benefit of the County under the copyright laws of the United States.

- c) CA shall retain all right, title, copyright, patent, trademark, trade secret and all other proprietary interests to the Licensed Programs and to all CA intellectual property and any derivatives thereof. ~~Customer/County~~ may not distribute, promote, or otherwise use any information or materials relating to Licensed Programs for any external use without the express prior written consent of CA or as otherwise specifically permitted. No title, copyright, patent, trademark, trade secret or other right of intellectual property not expressly granted hereunder is exchanged between the parties.
- d) Licensed Program(s) licensed hereunder are Commercial Items developed at private expense and are copyrighted.

ARTICLE 32. GENERAL LICENSE TERMS AND ADDITIONAL ORDERS

The terms and conditions attached as Appendix ~~AD and E~~ shall apply to program products ("Licensed Programs") to be licensed to the County pursuant to Order forms which may be submitted and accepted from time to time. ~~With respect to this Agreement, Appendices C and D the "County" shall also be referred to as "Customer/County" and the "Contractor" shall also be referred to as "CA."~~

~~Certain Articles Not Applicable~~

~~For the purpose of clarification, the following Articles in the Agreement applicable to Services do not apply to Appendix D as to Licensed Programs only:~~

- ~~1) ARTICLE 17. AUDITS~~
- ~~2) ARTICLE 23. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK~~
- ~~3) ARTICLE 24 a, b and c. EVENT OF DEFAULT~~

ARTICLE 33. VENDOR REGISTRATION/CONFLICT OF INTEREST

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

- | | |
|--|---|
| <ul style="list-style-type: none"> 1. Miami-Dade County Ownership Disclosure Affidavit
<i>(Section 2-8.1 of the Code of Miami-Dade County)</i> 2. Miami-Dade County Employment Disclosure Affidavit
<i>(Section 2.8.1(d)(2) of the Code of Miami-Dade County)</i> 3. Miami-Dade County Employment Drug-free Workplace Certification
<i>(Section 2-8.1.2(b) of the Code of Miami-Dade County)</i> | <ul style="list-style-type: none"> 4. Miami-Dade County Disability and Nondiscrimination Affidavit
<i>(Section 2-8.1.5 of the Code of Miami-Dade County)</i> 5. Miami-Dade County Debarment Disclosure Affidavit
<i>(Section 10.38 of the Code of Miami-Dade County)</i> 6. Miami-Dade County Vendor Obligation to County Affidavit
<i>(Section 2-8.1 of the Code of Miami-Dade County)</i> |
|--|---|

7. **Miami-Dade County Code of Business Ethics Affidavit**
(Sections 2-8.1(i), 2-11.1(b)(1) through (6) and (9), and 2-11.1(c) 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 E-Verify Affidavit**
(Executive Order 11-116)
12. **Miami-Dade County Pay Parity Affidavit**
(Resolution R-1072-17)
13. **Subcontracting Practices**
(Section 2-8.8 of the Code of Miami-Dade County)
14. **Subcontractor/Supplier Listing**
(Section 2-8.1 of the Code of Miami-Dade County)
15. **Form W-9 and 147c Letter**
(as required by the Internal Revenue Service)
16. **FEIN Number or Social Security Number**

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

17. **Office of the Inspector General**
(Section 2-1076 of the Code of Miami-Dade County)
18. **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.
19. **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.

b) Conflict of Interest and Code of Ethics

Section 2-11.1(d) of the Code of Miami-Dade County 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 of Miami-Dade County relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1 (y), the Miami-Dade County Commission on Ethics and Public Trust (Ethics Commission) shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance.

ARTICLE 34. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation maintained in the ordinary course of Contractor's business 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 of Miami-Dade County, 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 (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Implementing Order 3-38; (m) federal, state and local government-funded grants; and (n) interlocal agreements. **Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.**

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of 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. ~~provided that any such audit, investigation, monitoring, oversight, inspections, or reviews do not interfere with Contractor's ability to perform this Agreement or Contractor's other operations.~~

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. ~~so long as such records and documents specifically relate to this Agreement.~~ 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. ~~County shall reimburse Contractor for expenses incurred in connection with fulfilling its obligations under this Article 34 that exceed, in the aggregate, \$5000 US.~~

Commented [BC29]: Pending Audit OIG review

Commented [TS30]: We understand that it's unlikely the County will be able to get any exceptions to the standard language here approved. CA could get comfortable with these terms "as is" if the County could provide either (1) internal Inspector General policies that confirm the office must conduct audits in a manner that causes as little disruption to the contractor's business as possible and must be limited to documents and records that are actually associated with a contract; or (2) barring the first item, written confirmation that the foregoing points reflect IG policy via e-mail.

ARTICLE 35. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

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

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Small Business Enterprises Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics."
- e) Section 10-38 of the Code of Miami-Dade County, "Debarment of Contractors from County Work."
- f) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave."
- g) 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.
- h) The Equal Pay Act of 1963, as amended (29 U.S.C. 206(d)).
- i) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited."
- j) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 et seq.) "Discrimination."
- k) Chapter 22 of the Code of Miami-Dade County (§ 22-1 et seq.) "Wage Theft."
- l) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 et seq.) "Business Regulations."
- m) Any other laws prohibiting wage rate discrimination based on sex.

Pursuant to Resolution 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 "h" through "m" above.

Unless otherwise provided in a mutually agreed upon ~~transaction document~~ Order, 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), permit(s), etc. 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 36. 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 37. 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, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 38. 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 Services 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 product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 39. BANKRUPTCY

The County reserves the right to 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 40. 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 Miami-Dade County.

ARTICLE 41. COUNTY USER ACCESS PROGRAM (UAP)

a) User Access Fee

Pursuant to Section 2-8.10 of the Code of Miami-Dade County, 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.

a) ~~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 (3) business days of receipt of an order, of a decision to decline the order.~~

~~For all ordering entities located outside the geographical boundaries of Miami Dade County, 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.~~

b) 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 42. FIRST SOURCE HIRING REFERRAL PROGRAM

Pursuant to Section 2-2113 of the Code of Miami-Dade County, 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 the South Florida Workforce Investment Board ("SFWIB"), the designated Referral Agency, of the vacancy and list the vacancy with SFWIB 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 SFWIB. 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 SFWIB 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 FSHRP are available at <https://iapps.careersourcesfl.com/firstsource/>.

The parties acknowledge and agree that, as of the effective date of this Agreement, Contractor does not maintain a physical presence in Miami-Dade County and does not anticipate a need to hire personnel to perform work under this Agreement. In the event that Contractor's needs change and hiring local personnel to perform work in Miami-Dade County is necessary to complete performance under this Agreement, Contractor shall follow the requirements of the First Source Hiring Referral Program.

ARTICLE 43. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The Contractor agrees that if it is acting as a Contractor as defined in Chapter 119.0701, Florida State Statutes, Contractor shall comply with the Public Records Laws of the State of Florida, including by not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

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

ARTICLE 44. SURVIVAL

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

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

Contractor

Miami-Dade County

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

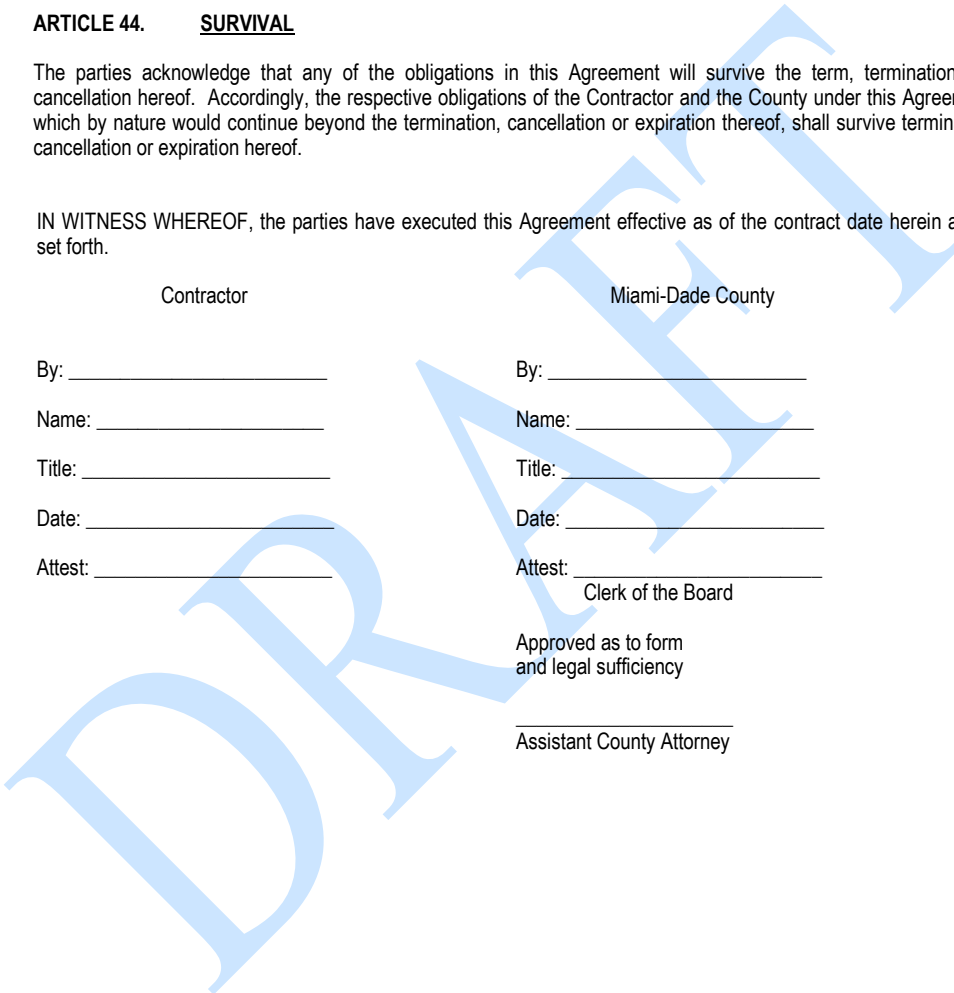
Attest: _____

Attest: _____

Clerk of the Board

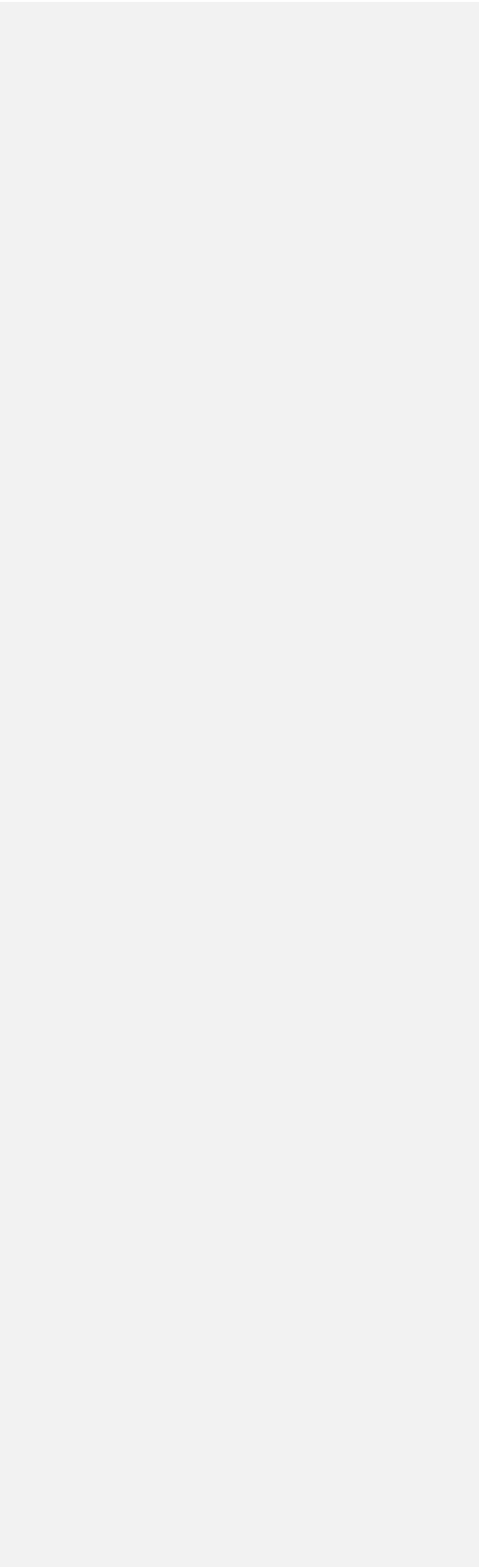
Approved as to form and legal sufficiency

Assistant County Attorney



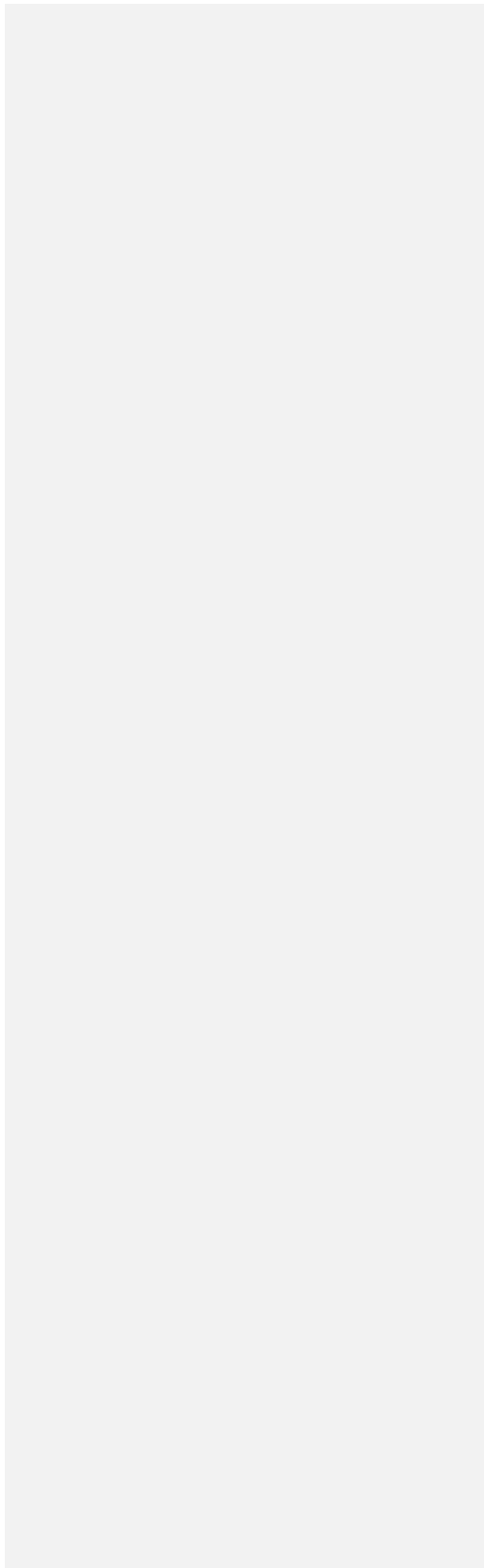
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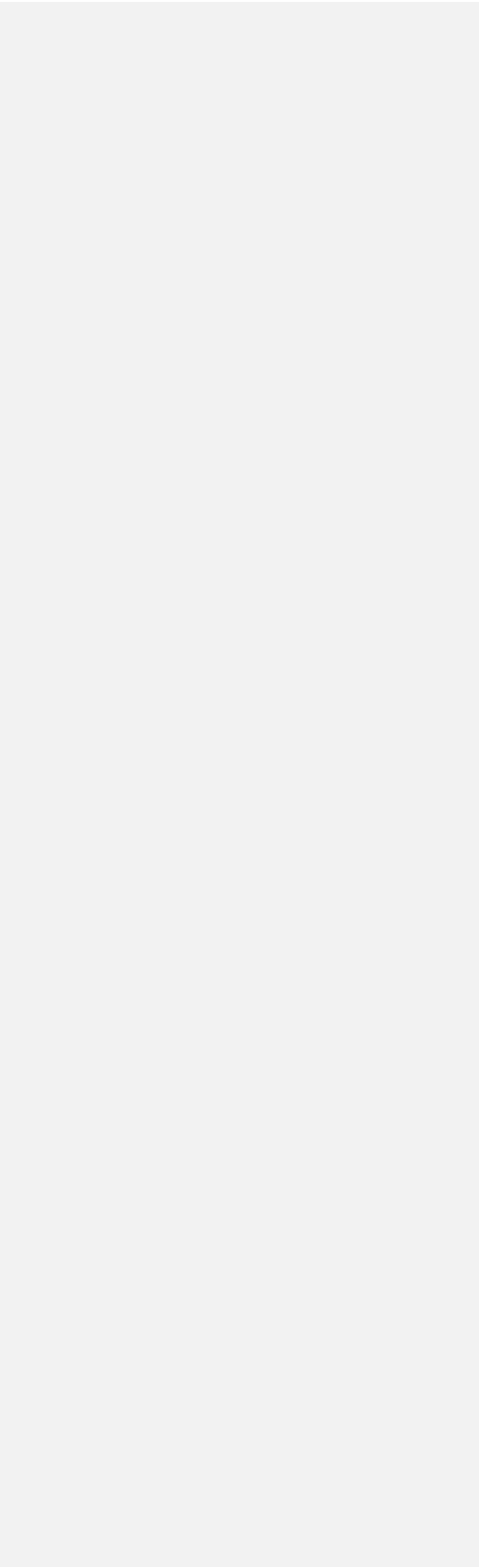


County

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APPENDIX A
GENERAL LICENSE TERMS AND CONDITIONS

1. GRANT OF LICENSE

1.1 CA grants County a non-exclusive, non-transferable license to use the Licensed Programs subject to the terms herein and in an Order.

1.2 CA authorizes County and County's authorized contractors and agents that agree to be bound by terms and conditions no less restrictive than those contained herein (collectively the "Authorized Users") to use the Licensed Programs hereunder only in accordance with use restrictions contained in the Orders and only for the internal data processing operations of County. The right to use or benefit from the Licensed Program extends to any majority-owned subsidiary of County provided such subsidiary agrees to comply with the terms of the referenced Agreement and the applicable Order Form. A breach by an Authorized User of this Agreement and/or any Order shall be considered to be a breach by and the responsibility of County.

Commented [MJ31]: Please identify which subsidiaries may wish to use the software. At that point we can determine if CA is agreeable to this.

1.3 Customer may, after obtaining CA's prior written consent and in compliance with CA transfer procedures and applicable terms herein, transfer the Licensed Program(s) indicated on such Order to a new location without a relocation charge to Customer, upon confirmation to CA that the original installation site has been closed, provided that such transfer is limited to the end user specified in the Order Form and such end user does not exceed the authorized use limitation as set forth in such Order Form.

Commented [MJ32]: Any license transfer will be negotiated and documented at that time.

1.4 County may make a reasonable number of copies of the Licensed Program for bona fide disaster recovery plans for backup and archival purposes. Use of such copies shall be limited (i) for the purpose of testing of the disaster recovery plan's procedures and effectiveness and (ii) as may be necessary during any period subsequent to the occurrence of an actual disaster during which County cannot operate the Licensed Program. County agrees to furnish such further documentation with respect to its disaster recovery plan and procedures as CA may reasonably request from time to time.

Commented [MJ33R32]: Reinserted this language with edits per our discussion on 5/31.

1.5 County agrees that it shall not: (i) access or use any portion of the Licensed Program not expressly licensed and paid for by County; (ii) cause or permit de-compilation or reverse engineering of all or any portion of the Licensed Program; (iii) disclose or publish performance benchmark results for Licensed Program(s) without CA's prior written consent, except for internal publication for internal purposes only; (iv) export or use the Licensed Programs or Documentation in violation of U.S. or other applicable laws or regulations, including the U.S. Department of Commerce export administration regulations; (v) use third party software provided by CA except in conjunction with the Licensed Program as licensed hereunder; or (vi) directly or indirectly sublicense, relicense, distribute, assign, disclose, use, rent or lease the Licensed Program or Documentation, or any portion thereof, for third party use, third party training, facilities management, time-sharing, or use as an application service provider, outsourcer, or service bureau, without the express prior written consent of CA. County shall maintain books and records in connection with County's actions under this Agreement. Such records shall include, at a minimum, the number of licenses purchased and being used by County. CA may request certified copies of, or, at its expense, audit the records of County to ensure compliance with the terms of this Agreement. Any such audit shall be conducted during regular business hours at County's offices and shall not interfere unreasonably with County's activities.

1.6 All rights not specifically granted hereunder, including, but not limited to, the right to modify the Licensed Programs are specifically reserved to CA.

2. FEES

2.1 Fees shall be designated on each applicable Order.

2.2 Each party hereunder is solely responsible for its tax liability including VAT, duties, tariffs and customs that may be imposed upon it by law. Any claimed exemption from such tariffs, duties or taxes must be supported by

proper documentary evidence delivered to CA. The Licensed Program shall be delivered to County, either by electronic delivery or in tangible media, F.O.B. Point of Shipment, as CA deems appropriate. In the event of electronic delivery, no tangible personal property will be delivered. Such electronic delivery may not automatically provide for an exemption from state and local sales or use tax.

3. MISCELLANEOUS

County shall observe all relevant import and export laws and regulations, including, but not necessarily limited to, the regulations of the US Department of Commerce.

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