



**HARDWARE AND MAINTENANCE AGREEMENT  
BETWEEN BROWARD COUNTY AND \_\_\_\_\_**

This Hardware Maintenance Agreement (the "Agreement") is made and entered into by and between Broward County, a political subdivision of the State of Florida ("County"), and \_\_\_\_\_, a (type of entity and state of organization) ("Provider").

A. [Insert recitals if applicable]

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1. DEFINITIONS**

- 1.1 Board. The Board of County Commissioners of Broward County, Florida.
- 1.2 Business hours or business day. 7 a.m. to 7 p.m. Eastern Time during weekdays that are not County holidays and on which County has not otherwise declared its offices closed.
- 1.3 Contract Administrator. (List Title/Position) or such person's successor as designated by County in writing.
- 1.4 Documentation. All manuals, user documentation, specifications, and other related materials pertaining to the Equipment and other hardware that Provider customarily furnishes to purchasers of the Equipment.
- 1.5 Equipment. The hardware and other property identified in Exhibit A being provided to County pursuant to this Agreement, including any embedded software and firmware incorporated therein or customarily provided by Provider to purchasers of the Equipment.
- 1.6 Purchasing Director. The Broward County Purchasing Director as appointed by the Broward County Administrator.
- 1.7 Support and Maintenance Services. The maintenance and support required to maintain optimal performance of the Equipment as described in the Documentation and Exhibit C.

**ARTICLE 2. EXHIBITS**

The following exhibits are attached hereto and incorporated into this Agreement:

<b>Exhibit A</b>	<b>Statement of Work</b>
<b>Exhibit B</b>	<b>Payment Schedule</b>
<b>Exhibit C</b>	<b>Support and Maintenance Services</b>
<b>Exhibit D</b>	<b>Insurance Coverages</b>
<b>Exhibit E</b>	<b>Work Authorization Form</b>
<b>Exhibit F</b>	<b>CBE Subcontractor Schedule</b>
<b>Exhibit G</b>	<b>Business Associate Agreement</b>

If there is a conflict or inconsistency between any provision contained in Articles 1 - 12 and any provision contained in any of the Exhibits, the provision of Articles 1 - 12 shall prevail and be given effect unless expressly stated to the contrary.

### **ARTICLE 3. SCOPE OF SERVICES**

3.1 Scope of Services. Provider shall perform all work specified in this Agreement inclusive of the Exhibits. Unless stated otherwise in this Agreement, the work required of Provider includes all labor, materials and tasks, whether or not enumerated in the Agreement, that are such an inseparable part of the work expressly stated in the Agreement that exclusion thereof would render Provider's performance impractical, illogical, or unconscionable.

3.2 Support and Maintenance Services. Provider shall provide Support and Maintenance Services to ensure the proper functioning and optimal performance of the Equipment as set forth in the Documentation, pursuant to the terms of Exhibit C. Without any charge during the term of the Agreement, Provider shall supply any updates, upgrades, and releases to any software and firmware provided with the Equipment that are made available to Provider's other customers.

3.3 Change of Scope Procedures. Provider acknowledges that Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the scope of services to be provided under this Agreement except as expressly provided herein. To the extent any goods or services under this Agreement, or the quantity thereof, are optional ("Optional Services"), County may select the type, amount, and timing of such goods or services pursuant to a Work Authorization (Exhibit E) executed by Provider and County pursuant to this section, and provided that no such selection, when combined with those goods or services required under the Agreement, would result in a payment obligation exceeding the applicable maximum amount stated in Section 5.1. Notwithstanding anything to the contrary in the Agreement, Work Authorizations for Optional Services pursuant to this section shall be executed on behalf of the County as follows: the Contract Administrator may execute Work Authorizations for which the total cost to County in the aggregate is less than \$30,000.00; the Purchasing Director may execute Work Authorizations for which the total cost to the County in the aggregate is within the Purchasing Director's delegated authority; any Work Authorizations above the County's Purchasing Director delegated authority shall require Board approval. Subsequent to the full execution of any Work Authorization, the Contract Administrator will issue a Notice to Proceed for those authorized Optional Services. Provider shall not commence work on any Work Authorization until after receipt of the applicable Notice to Proceed.

3.4 Contract Administrator Authority. Unless otherwise expressly stated herein or in the applicable Procurement Code, Code of County Ordinances, or County Code of Administrative Procedure, the Contract Administrator may act on behalf of County to exercise the authority and powers of County under this Agreement.

#### ARTICLE 4. TERM AND TIME OF PERFORMANCE

4.1 Term. The Agreement shall become effective on the date it is fully executed by the parties (the "Effective Date"). The term of the Agreement shall be for a period of     ( )     years from the date of Final Acceptance (the "Initial Term").

4.2 Extensions. County shall have the option to renew this Agreement for      additional one (1) year terms by sending notice of renewal to Provider at least thirty (30) days prior to the expiration of the then-current term. The Purchasing Director is authorized to exercise this renewal option. In the event that unusual or exceptional circumstances, as determined in the sole discretion of the Purchasing Director, render the exercise of an extension not practicable or if no extension is available and expiration of this Agreement would result in a gap in the provision of services necessary for the ongoing operations of the County, then this Agreement may be extended on the same terms and conditions by the Purchasing Director for period(s) not to exceed six (6) months in the aggregate [, provided that any such extension is within the authority of the Purchasing Director or otherwise authorized by the Board] **[add additional language if contract is not approved by the Board]**.

4.3 Fiscal Year. The continuation of this Agreement beyond the end of any County fiscal year shall be subject to both the appropriation and the availability of funds, in accordance with Chapter 129, Florida Statutes.

4.4 Delivery. Provider shall deliver the Equipment and Documentation via inside delivery to County within      days after the Effective Date at the address provided by County. Transportation cost and risk, and the cost of delivery (including lift gate services and depalletization), assembly and installation, including any applicable taxes and all actions necessary to integrate the Equipment into County's existing system, shall be the responsibility of Provider, except to the extent (if any) expressly provided in Exhibit A.

4.5 Final Acceptance. Broward County Administrative Code Section 22.148 requires that all applicable software purchases be inspected and tested by the County, including verification by its Enterprise Technology Services ("ETS"), prior to final written acceptance of the software and software-related services. To the extent applicable under Broward County Administrative Code Section 22.148, within thirty (30) days following completion of any installation and integration of the Equipment required under this Agreement, County shall test the Equipment to determine whether it: (i) properly functions with any applicable operating software; (ii) provides the capabilities stated in this Agreement and the Documentation; and (iii) if applicable, meets the acceptance criteria stated in the Statement of Work (the criteria referenced in (i), (ii), and (iii) are collectively referred to as the "Final Acceptance Criteria"). In the event of a conflict between the Documentation and the acceptance criteria stated in the Statement of Work, the Statement of Work shall prevail. Final payment shall not be made to Provider prior to the written confirmation by the County's Chief Information Officer or his or her designee that the Equipment has

successfully passed the Final Acceptance Criteria, if applicable, and such written confirmation shall constitute "Final Acceptance."

4.6 Timetable. If the Equipment fails to achieve Final Acceptance within     (    ) months from the Effective Date, County shall have the option to terminate the Agreement by written notice from its Contract Administrator, in which event Provider shall, within fifteen (15) days, pick up the Equipment at Provider's expense and reimburse all sums paid by County under this Agreement, if any. For purposes of this paragraph, any delays caused by County prior to Final Acceptance shall extend the Final Acceptance deadline by the same number of days as the delay caused by County.

4.7 Time is of the essence for all performance required under this Agreement.

## **ARTICLE 5. COMPENSATION**

5.1 For the duration of the Agreement, County will pay Provider in accordance with Exhibit B up to the following maximum amount(s):

<b>Services/Goods</b>	<b>Term</b>	<b>Not-To-Exceed Amount</b>
Equipment and Support and Maintenance Services	Initial Term	\$
Each optional renewal term	Each <u>    </u> year renewal term	\$
Optional Services	Duration of the Agreement (inclusive of any renewals)	\$
<b>TOTAL NOT TO EXCEED</b>		\$

Payment shall be made only for work actually performed and completed pursuant to this Agreement or as otherwise set forth in Exhibit B (Payment Schedule), which amount shall be accepted by Provider as full compensation for all such work. Provider acknowledges that the amounts set forth herein are the maximum amounts payable for the respective terms and constitute a limitation upon County's obligation to compensate Provider for its work under this Agreement. These maximum amounts, however, do not constitute a limitation of any sort upon Provider's obligation to perform all items of work required under this Agreement. Unless otherwise expressly stated in this Agreement, Provider shall not be reimbursed for any expenses it incurs under this Agreement.

### **5.2 Method of Billing and Payment**

5.2.1 Invoices. Provider may submit invoices only for goods provided and services completed in accordance with the Payment Schedule set forth in Exhibit B. Unless otherwise indicated in Exhibit B, an original plus one copy of each invoice must be submitted within fifteen (15) days after the end of the month for which payment is sought, except that the final invoice must be submitted no later than sixty (60) days after all services are completed. Provider shall submit with each invoice a Certification of Payments to Subcontractors and Suppliers on the form

provided by County (Exhibit F), as may be modified in County's reasonable discretion. If applicable, the certification shall be accompanied by a copy of the notification sent to each subcontractor and supplier listed in item 2 of the certification form, explaining the good cause why payment has not been made. Unless otherwise stated in Exhibit B or the applicable Work Authorization, any Optional Services shall be invoiced in accordance with the existing invoicing schedule for any like goods or services provided under this Agreement, including (if applicable) invoiced pro rata for the initial invoice period.

5.2.2 Payments. County shall pay Provider within thirty (30) days of receipt of Provider's proper invoice, as required by the "Broward County Prompt Payment Ordinance" (Broward County Ordinance No. 89-49). Payment shall be made to Provider at the most recent address designated under the "Notices" provision of this Agreement. To be deemed proper, an invoice must comply with all requirements set forth in this Agreement and must be submitted pursuant to any instructions prescribed by the Contract Administrator. County shall have the right to withhold payment of the invoice based on Provider's failure to comply with any term, condition, or requirement of this Agreement. The parties hereto agree that any amounts so withheld shall not be subject to payment of any interest by County.

5.2.3 Unless a shorter period is required under applicable law or under the applicable contract, Provider shall pay its Certified Business Entity ("CBE") subcontractors and suppliers within fifteen (15) days following receipt of payment from County and shall pay all other subcontractors and suppliers within thirty (30) days following receipt of payment from County.

5.3 Travel. With respect to travel costs and travel-related expenses, Provider agrees to adhere to Section 112.061, Florida Statutes, except to the extent, if any, that Exhibit B expressly provides to the contrary. County shall not be liable for any such expenses that have not been approved in advance, in writing, by County.

5.4 Fixed Pricing. Prices set forth in Exhibit B shall remain firm and fixed for the term of the Agreement, including any optional terms. However, Provider may offer incentive or volume discounts to County at any time.

## **ARTICLE 6. WARRANTIES**

6.1 Ownership. Provider represents and warrants that it is the owner of all right, title, and interest in and to the Equipment and other property being sold to County under this Agreement, that it has the right to sell such Equipment and other property to County, and that such sale is free and clear of any lien or interest of any other person or entity.

6.2 Equipment Warranty. Provider represents and warrants to County that for a period of one (1) year from the date of Final Acceptance, the Equipment will perform substantially as described in the Documentation and the Statement of Work (Exhibit A), will be free from defects in workmanship and material, and will have all of the qualities and features and be capable of performing all of the functions described in the Documentation and Statement of Work. This

warranty shall not cover any failure of the Equipment resulting from (a) use of the Equipment in a manner other than that for which it was intended; or (b) modification of the Equipment by County not authorized by Provider.

6.3 Warranty Regarding Viruses. Provider further represents, warrants, and agrees that the Equipment and any software or firmware provided under this Agreement are free from currently-known viruses or malicious software (at the time the Equipment and any subsequent version thereof is provided to County), and that Provider has and will continue, for the full term of this Agreement, to use commercially reasonable security measures to ensure the integrity of such software and firmware from data leaks, hackers, denial of service attacks, and other unauthorized intrusions.

6.4 Intellectual Property Warranty. Provider represents and warrants that at the time of entering into this Agreement, no claims have been asserted against Provider (whether or not any action or proceeding has been brought) that allege that any part of the Equipment or other property provided to County under this Agreement infringes or misappropriates any patent, copyright, mask copyright, or any trade secret or other intellectual or proprietary right of a third party, and that Provider is unaware of any such potential claim. Provider also agrees, represents, and warrants that the Equipment and services to be provided pursuant to this Agreement will not infringe or misappropriate any patent, copyright, mask copyright, or any trade secret or other intellectual or proprietary right of a third party.

6.5 Quality of Performance and Materials. Provider represents and warrants that all services provided under this Agreement will be performed by a person duly qualified and sufficiently experienced to perform such services and, where required, licensed by all appropriate governmental authorities in the applicable area(s). Provider agrees that all services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall meet or exceed prevailing industry and professional standards for such services. Provider represents and warrants that all materials, Equipment, and products furnished pursuant to this Agreement shall be of good quality and free from defective or inferior workmanship; any items found not to be in conformance with the foregoing and with the Documentation or applicable specifications (if any) in Exhibit A shall be replaced by Provider at no additional cost to County. If requested by County's Contract Administrator, Provider shall develop and utilize a quality assurance plan approved by County to ensure the appropriate quality of the work and materials provided under this Agreement.

6.6 Remedy for Breach of Warranty. In the event of written notice from County of a breach of warranty, Provider shall, at no charge to County, promptly correct the warranty breach including, when required, by replacing Equipment. In addition, upon notice from County of any error or defect in the Equipment, Provider will immediately provide to County any known reasonable methods of operating the Equipment in a manner that eliminates the adverse effects of the error or defect. Any replacement Equipment will be warranted for one (1) year from the date it is installed. The remedies in this section are in addition to any other rights and remedies County may have under this Agreement or applicable law. If Provider is unable to correct a

material warranty breach within a reasonable period of time not to exceed ten (10) business days, County may terminate the Agreement by written notice from its Contract Administrator, in which event Provider shall, within fifteen (15) days, pick up the Equipment at Provider's expense and reimburse all sums paid by County under this Agreement, if any, and neither party shall have any further obligation to the other except as to any provision of the Agreement that expressly survives the Agreement's termination or expiration.

## **ARTICLE 7. CONFIDENTIAL INFORMATION, SECURITY AND ACCESS**

7.1 Public Records Law. As a political subdivision of the State of Florida, County is subject to Florida's Public Records Law, Chapter 119 of the Florida Statutes. Notwithstanding anything else in this Agreement, any action taken by County in compliance with, or in a good faith attempt to comply with, the requirements of Chapter 119 shall not constitute a breach of this Agreement. Any material submitted to County that Provider contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Florida Statutes Chapter 119) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCT – TRADE SECRET." In addition, Provider must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Florida Statutes Section 812.081 and stating the factual basis for same. In the event that a third party submits a request to County for records designated by Provider as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Provider. Provider shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the non-disclosure of any Trade Secret Materials in response to a records request by a third party.

### 7.2 County Confidential Information.

7.2.1 All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs, and methods that Provider obtains from County in connection with this Agreement, that are made or developed by Provider in the course of the performance of the Agreement, or in which County holds proprietary rights, constitute County Confidential Information.

7.2.2 All County-provided employee information, financial information, and personally identifiable information for individuals or entities interacting with County (including, without limitation, social security numbers, birth dates, banking and financial information, and other information deemed exempt or confidential under state or federal law) also constitute County Confidential Information.

7.2.3 County Confidential Information may not, without the prior written consent of County, or as otherwise required by law, be used by Provider or its employees, agents,

subconsultants or suppliers for any purpose other than for the benefit of County pursuant to this Agreement. Neither Provider nor its employees, agents, subconsultants or suppliers may sell, transfer, publish, disclose, display, license, or otherwise make available to any other person or entity any County Confidential Information without the prior written consent of County.

7.2.4 Provider expressly agrees to be bound by and to defend, indemnify and hold harmless County and its officers and employees from the breach of any federal, state or local law by Provider or its employees, agents, subconsultants, or suppliers regarding the unlawful use or disclosure of County Confidential Information.

7.2.5 Upon expiration or termination of this Agreement, or as otherwise demanded by County, Provider shall immediately turn over to County all County Confidential Information, in any form, tangible or intangible, possessed by Provider or its employees, agents, subconsultants, or suppliers.

7.3 Security and Access. Any access by Provider to any aspect of the County's network must comply at all times with all applicable County access and security standards, as well as any other or additional restrictions or standards for which County provides written notice to Provider. Provider will provide any and all information that County may reasonably request in order to determine appropriate security and network access restrictions and verify Provider's compliance with County security standards. If at any point in time County, in the sole discretion of its Chief Information Officer, determines that Provider's access to any aspect of the County's network presents an unacceptable security risk, County may immediately suspend or terminate Provider's access and, if the risk is not promptly resolved to the reasonable satisfaction of the County's Chief Information Officer, may terminate this Agreement or any applicable Work Authorization upon ten (10) business days' notice (including, without limitation, without restoring any access to the County network to Provider).

7.4 Data and Privacy. Provider shall comply with all applicable data and privacy laws and regulations, including without limitation the Florida Information Protection Act of 2014, Florida Statutes Section 501.171, and shall ensure that County data transmitted or stored in the System is not transmitted or stored outside the continental United States. Provider may not sell, market, publicize, distribute, or otherwise make available to any third party any personal identification information (as defined by Florida Statutes Section 817.568 or Section 817.5685) that Provider may receive or otherwise have access to in connection with this Agreement, unless expressly authorized in advance by County. If and to the extent requested by County, Provider shall ensure that all hard drives or other storage devices and media that contained County data have been wiped in accordance with the then-current best industry practices, including without limitation DOD 5220.22-M, and that an appropriate data wipe certification is provided to the satisfaction of the Contract Administrator.

7.5 Injunctive Relief. The parties represent and agree that neither damages nor any other legal remedy is adequate to remedy any breach of this article, and that the injured party shall therefore be entitled to injunctive relief to restrain or remedy any breach or threatened breach.



7.6 Survival. The obligations under this Article 7 shall survive the termination of this Agreement or of any license granted under this Agreement.

## **ARTICLE 8. INDEMNIFICATION AND LIMITATION OF LIABILITY**

8.1 Indemnification. Provider shall be fully liable for the actions of its current and former officers, employees, subcontractors, and other agents under this Agreement. Provider shall at all times hereafter indemnify, hold harmless and defend County and all of County's current and former officers, employees, and other agents (collectively, "Indemnified Party") from and against any and all lawsuits, causes of action, demands, claims, losses, fines, penalties, damages, judgments, liabilities, and expenditures of any kind, including attorneys' fees, litigation expenses, and court costs (collectively, "Claim"), raised or asserted by any person or entity that is not a party to this Agreement, which Claim is caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of Provider or any current or former officer, employee, subcontractor, or other agent of Provider, arising from, relating to, or in connection with any obligation or performance under this Agreement. In the event any Claim is brought against an Indemnified Party, Provider shall, upon written notice from County, defend each Indemnified Party against each such Claim through counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the County Attorney, in his or her reasonable discretion, any sums due Provider under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been resolved. Any sums so withheld shall not be subject to the payment of interest by County.

8.2 Limitation of Liability. Neither Provider nor County shall be liable to the other party for any damages under this Agreement that exceed the largest of the following amounts: (a) \$100,000; (b) twice the maximum compensation amount specified in Section 5.1; or (c) the amount of insurance Provider is required to provide under Article 9. Neither party shall be liable for the other party's special, indirect, punitive, or consequential damages (including damages resulting from lost data or records other than costs incurred in the recovery thereof), even if the party has been advised that such damages are possible, or for the other party's lost profits, lost revenue, or lost institutional operating savings. These limitations of liability shall not apply to (i) any Claim resulting from Provider's actual or alleged disclosure of County Confidential Information or resulting from an actual or alleged data breach in violation of applicable law, (ii) any Claim resulting from an actual or alleged infringement of any interest in any intellectual property, or (iii) any indemnification obligation under this Agreement.

8.3 Infringement Remedy. If any Equipment or portion of the Equipment is finally adjudged to infringe, or in Provider's opinion is likely to become the subject of such a Claim, Provider shall, at County's option, either: (i) procure for County the right to continue using the Equipment; (ii) modify or replace the Equipment to make it noninfringing; or (iii) refund to County all fees paid under this Agreement. Provider shall have no liability regarding any infringement claim caused by any County modification of the Equipment not specifically authorized in writing by Provider.

## **ARTICLE 9. INSURANCE**

9.1 For purposes of this article, the term "County" shall include Broward County and its members, officials, officers, and employees.

9.2 Provider shall maintain, at its sole expense and at all times during the term of this Agreement (unless a different time period is otherwise stated herein), at least the minimum limits of insurance coverage designated in **Exhibit \_\_** (inclusive of any amount provided by an umbrella or excess policy) in accordance with the terms and conditions stated in this article. All required insurance shall apply on a primary basis, and shall not require contribution from, any other insurance or self-insurance maintained by County. Any insurance, or self-insurance, maintained by County shall be in excess of, and shall not contribute with, the insurance provided by Provider.

9.3 Insurers providing the insurance required by this Agreement must either be: (1) authorized by a current certificate of authority issued by the State of Florida to transact insurance in the State of Florida, or (2) except with respect to coverage for the liability imposed by the Florida Workers' Compensation Act, an eligible surplus lines insurer under Florida law. In addition, each such insurer shall have and maintain throughout the period for which coverage is required, a minimum A. M. Best Company Rating of "A-" and a minimum Financial Size Category of "VII." To the extent insurance requirements are designated in **Exhibit \_\_**, the applicable policies shall comply with the following:

9.3.1 Commercial General Liability Insurance. Policy shall be no more restrictive than that provided by the latest edition of the standard Commercial General Liability Form (Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office (ISO), with the exception of endorsements specifically required by ISO or the State of Florida, and liability arising out of:

Mold, fungus, or bacteria

Terrorism

Silica, asbestos or lead

Sexual molestation

Architects and engineers professional liability, unless coverage for professional liability is specifically required by this Agreement.

County shall be included on the policy (and any excess or umbrella policy) as an "Additional Insured" on a form no more restrictive than ISO form CG 20 10 (Additional Insured – Owners, Lessees, or Contractor). The policy (and any excess or umbrella policy) must be endorsed to waive the insurer's right to subrogate against County.

9.3.2 Business Automobile Liability Insurance. Policy shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of the standard Business Auto Policy (ISO Form CA 00 01) without any restrictive endorsements, including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with the performance of work under this Agreement. County shall be included on the policy (and any excess or umbrella policy) as an "Additional Insured." The policy (and any excess or umbrella policy) must be endorsed to waive the insurer's right to subrogate against County.

9.3.3 Workers' Compensation/Employer's Liability Insurance. Such insurance shall be no more restrictive than that provided by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance (NCCI), with the exception of endorsements required by NCCI or the State of Florida. The policy must be endorsed to waive the insurer's right to subrogate against County in the manner which would result from the attachment of the NCCI form "Waiver of our Right to Recover from Others Endorsement" (Advisory Form WC 00 03 13) with County scheduled thereon. Where appropriate, coverage shall be included for any applicable Federal or State employer's liability laws including, but not limited to, the Federal Employer's Liability Act, the Jones Act, and the Longshoreman and Harbor Workers' Compensation Act.

9.3.4 Professional Liability Insurance. Such insurance shall cover Provider for those sources of liability arising out of the rendering or failure to render professional services in the performance of the services required in this Agreement. If policy provides coverage on a claims-made basis, such coverage must respond to all claims reported within at least three (3) years following the period for which coverage is required, unless a longer period is indicated in **Exhibit \_\_\_\_**.

9.3.5 Cyber Liability, or Technology Errors and Omissions Insurance. Coverage is required for any system connected to, and, or accessible from the internet. Coverage may be included as part of the required Professional Liability Insurance. If policy provides coverage on a claims-made basis, such coverage must respond to all claims reported within at least three (3) years following the period for which coverage is required, unless a longer period is indicated in **Exhibit \_\_\_\_**. Such policy shall cover, at a minimum, the following:

- Data Loss and System Damage Liability
- Security Liability
- Privacy Liability

Privacy/Security Breach Response coverage, including Notification Expenses

County shall be included on the policy as an “Additional Insured” unless such endorsement is not available by the insurer.

9.4 Within fifteen (15) days after the Effective Date of this Agreement or notification of award, whichever is earlier, Provider shall provide to County satisfactory evidence of the insurance required in this Agreement. With respect to the Workers’ Compensation/Employer’s Liability Insurance, Professional Liability, and Business Automobile Liability Insurance, an appropriate Certificate of Insurance identifying the project and signed by an authorized representative of the insurer shall be satisfactory evidence of insurance. With respect to the Commercial General Liability, an appropriate Certificate of Insurance identifying the project, signed by an authorized representative of the insurer, and copies of the actual additional insured endorsements as issued on the policy(ies) shall be satisfactory evidence of such insurance.

9.5 Coverage is not to cease and is to remain in force until County determines all performance required of Provider is completed. If any of the insurance coverage will expire prior to the completion of the Services, proof of insurance renewal shall be provided to County prior to the policy’s expiration.

9.6 Provider shall provide County thirty (30) days’ advance notice of any cancellation of the policy except in cases of cancellation for non-payment for which County shall be given ten (10) days’ advance notice.

9.7 Provider shall provide, within thirty (30) days after receipt of a written request from County, a copy of the policies providing the coverage required by this Agreement. Provider may redact portions of the policies that are not relevant to the insurance required by this Agreement.

9.8 County and Provider, each for itself and on behalf of its insurers, to the fullest extent permitted by law without voiding the insurance required hereunder, waive all rights against the other party and any of the other party’s contractors, subcontractors, agents, and employees for damages or loss to the extent covered and paid for by any insurance maintained by the other party.

9.9 If Provider uses a subcontractor, Provider shall require each subcontractor to endorse County as an “Additional Insured” on the subcontractor’s Commercial General Liability policy.

**ARTICLE 10. EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE**

10.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Provider shall include substantially similar language in its contracts with any and all permitted subcontractors providing goods or services under this Agreement.

10.2 Failure by Provider to carry out any of the requirements of this article shall constitute a material breach of this Agreement, which shall permit County to terminate this Agreement or to exercise any other remedy provided under this Agreement, Broward County Code of Ordinances, Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

**INCLUDE FOLLOWING PARAGRAPHS IF CBE GOAL SET.**

10.3 Provider shall comply with all applicable requirements of the County's CBE Program as established by Broward County Business Opportunity Act of 2012, Section 1-81, Broward County Code of Ordinances (the "Act"), in performing this Agreement. Provider acknowledges that the Board, acting through the Office of Economic and Small Business Development ("OESBD"), may make minor administrative modifications to the CBE Program which shall become applicable to this Agreement if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to Provider and shall include a deadline for Provider to notify County if Provider concludes that the modification exceeds the authority of this section of this Agreement. Failure of Provider to timely notify County of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by Provider.

10.4 Provider will meet the following CBE participation goal by utilizing the CBE firms for the following percentage of Services under this Agreement:

CBE participation goal	%
------------------------	---

Provider stipulates that each CBE firm utilized to meet the CBE participation goal must be certified by the OESBD. Provider shall inform County immediately when a CBE firm is not able to perform or if Provider believes the CBE firm should be replaced for any other reason, so that the OESBD may review and verify the good faith efforts of Provider to substitute the CBE firm with another CBE firm. Whenever a CBE firm is terminated for any reason, including cause, Provider shall provide written notice to the OESBD and shall substitute another CBE firm in order to maintain the level of CBE participation required herein, unless otherwise provided herein or agreed in writing by the parties. Such substitution shall not be required in the event the termination results from County modifying the scope of services and there is no available CBE to perform the new scope of services, in which event Provider shall notify County and the OESBD may adjust the CBE participation goal by written notice to Provider. Provider may not terminate for convenience a CBE firm without County's prior written consent, which consent shall not be unreasonably withheld. County may add or increase the required participation of CBE firms under this Agreement in connection with any amendment, extension, modification, or change order to this Agreement that, by itself or aggregated with previous amendments, extensions, modifications, or change orders, increases the initial Agreement price by ten percent (10%) or more. To the extent Provider is subcontracting any work under this Agreement, Provider shall make a good faith effort to include CBE firms in work resulting from any such amendment,

extension, modification, or change order and shall report such efforts, along with evidence thereof, to the OESBD.

10.5 In performing the Services, the Parties hereby incorporate the list of Provider's participating CBE firms, addresses, scope of work, and the percentage of work amounts identified on each Letter of Intent into this Agreement (Exhibit F). Promptly upon execution of this Agreement by County, Provider shall enter into a formal contract with the CBE firms listed in Exhibit F and, upon request, shall provide copies of the contracts to the Contract Administrator and OESBD.

10.6 Provider shall provide written monthly reports to the Contract Administrator attesting to Provider's compliance with the CBE participation goals stated in this article. In addition, Provider shall allow County to engage in on-site reviews to monitor Provider's progress in achieving and maintaining its contractual and CBE program obligations. Such review and monitoring shall be by the Contract Administrator in conjunction with the OESBD, unless otherwise determined by the County Administrator. County shall have access, without limitation, to Provider's books and records, including payroll records, tax returns and records, and books of account, on five (5) business days' notice.

10.7 In the event of Provider's noncompliance with its CBE participation goal (including without limitation the unexcused reduction of a CBE firm's participation), the affected CBE firm shall have the right to exercise any remedies as may be available as between the CBE firm and Provider.

10.8 The Contract Administrator may, at its option, increase allowable retainage or withhold progress payments unless and until Provider demonstrates timely payments of sums due to all subcontractors and suppliers. The presence of a "pay when paid" provision in a Provider's contract with a CBE firm shall not preclude County or its representatives from inquiring into allegations of nonpayment.

## **ARTICLE 11. TERMINATION**

11.1 This Agreement may be terminated for cause based on any breach that is not cured within ten (10) days after written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board upon providing written notice to Provider of the termination date, which shall be not less than thirty (30) days after the date such written notice is provided. If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall, to the full extent permissible under applicable law, be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

11.2 County may terminate this Agreement if Provider is found to have submitted a false certification pursuant to Section 287.135, Florida Statutes, if Provider has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities

in the Iran Petroleum Energy Sector List, or if Provider has failed to promptly implement corrective action for audit deficiencies upon reasonable notice by County. Notwithstanding anything contained in this Agreement to the contrary, the rights and obligations of the parties under this paragraph shall be governed by Section 287.135, Florida Statutes, to the full extent applicable.

11.3 Provider represents that neither it nor any of its affiliates has been placed on the discriminatory vendor list, as defined by Section 287.134, Florida Statutes. County may terminate this Agreement effective immediately, without any further obligation to Provider, upon learning that such representation is false or if Provider or any of its affiliates is placed on the discriminatory vendor list.

11.4 Additionally, and notwithstanding anything to the contrary in this Agreement, County may terminate this Agreement without any further liability to Provider upon the decertification of Provider as a Certified Business Entity ("CBE") by County's Office of Economic and Small Business Development ("OESBD"), if Provider's status as a CBE was a factor in the award of the Agreement and such status was misrepresented by Provider. However, such termination shall not be effective until expiration of any timely-filed review or appeal of the decertification decision.

11.5 Notice of termination shall be provided in accordance with the "Notices" section of this Agreement.

11.6 In the event this Agreement is terminated for convenience, Provider shall be paid for any goods and services properly provided through the termination date specified in the written notice of termination. Provider acknowledges that it has received good, valuable and sufficient consideration from County, the receipt and adequacy of which are hereby acknowledged by Provider, for County's right to terminate this Agreement for convenience, and Provider hereby waives, to the full extent permissible under applicable law, any and all rights to challenge the adequacy of such consideration or the validity of County's right to terminate for convenience.

## **ARTICLE 12. MISCELLANEOUS**

12.1 Rights in Documents and Work. Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement shall be and remain the property of County and, if a copyright is claimed, Provider hereby grants to County a nonexclusive perpetual license to use the copyrighted item(s), to prepare derivative works, and to make and distribute copies to the public. In the event of termination or expiration of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Provider, whether finished or unfinished, shall become the property of County and shall be delivered by Provider to the Contract Administrator within seven (7) days of termination or expiration of this Agreement by either party.

12.2 Audit Right and Retention of Records. County shall have the right to audit the books, records, and accounts of Provider and its subcontractors that are related to this Agreement. Provider and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement and performance thereunder. All books, records, and accounts of Provider and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Provider or its subcontractor, as applicable, shall make same available at no cost to County in written form.

Provider and its subcontractors shall preserve and make available, at reasonable times within Broward County for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a minimum period of three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. County audits and inspections pursuant to this section may be performed by any County representative (including any outside representative engaged by County). County reserves the right to conduct such audit or review at Provider's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry. If an audit or inspection in accordance with this section discloses overpricing or overcharges to County of any nature by Provider in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of the County's audit shall be reimbursed to the County by Provider in addition to making adjustments for the overcharges. Any adjustments and/or payments due as a result of such audit or inspection shall be made within thirty (30) days from presentation of County's findings to Provider.

Provider shall ensure that the requirements of this section are included in all agreements with its subcontractor(s).

12.3 Public Records. To the extent Provider is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Provider shall:

- a. Keep and maintain public records required by County to perform the services under this Agreement;
- b. Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- c. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this



Agreement and following completion or termination of this Agreement if the records are not transferred to County; and

d. Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of Provider or keep and maintain public records required by County to perform the services. If Provider transfers the records to County, Provider shall destroy any duplicate public records that are exempt or confidential and exempt. If Provider keeps and maintains public records, Provider shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

The failure of Provider to comply with the provisions of this section shall constitute a material breach of this Agreement entitling County to exercise any remedy provided in this Agreement or under applicable law.

A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. Provider will provide any requested records to County to enable County to respond to the public records request.

**IF PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF FLORIDA STATUTES CHAPTER 119 TO PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) \_\_\_\_\_, \_\_\_\_\_@broward.org, 115 S. ANDREWS AVE., SUITE \_\_\_\_\_, FORT LAUDERDALE, FLORIDA 33301.**

12.4 Truth-In-Negotiation Representation. Provider's compensation under this Agreement is based upon representations supplied to County by Provider, and Provider certifies that the wage rates, factual unit costs, and other factual information supplied to substantiate Provider's compensation are accurate, complete, and current at the time of contracting. County shall be entitled to recover any damages it incurs to the extent any such representation is untrue.

12.5 Public Entity Crime Act. Provider represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. In addition to the foregoing, Provider further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Provider has been placed on the convicted vendor list. Notwithstanding any provision in this Agreement to the contrary, if any representation stated in this paragraph is false, County

shall have the right to immediately terminate this Agreement and recover all sums paid to Provider under this Agreement.

12.6 Independent Contractor. Provider is an independent contractor under this Agreement. Provider shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

12.7 Third Party Beneficiaries. The parties acknowledge that there are no third party beneficiaries under this Agreement.

12.8 Notices. In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail with a contemporaneous copy via e-mail to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change.

NOTICE TO COUNTY:

Broward County \_\_\_\_\_

Attn: \_\_\_\_\_

115 S. Andrews Ave., Suite \_\_\_\_\_

Ft. Lauderdale, Florida 33301

Email address: \_\_\_\_\_

NOTICE TO PROVIDER:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Email address: \_\_\_\_\_

12.9 Assignment. Except for subcontracting approved by County at the time of the execution of this Agreement or any written amendment hereto, neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by Provider without the prior written consent of County. If Provider violates this provision, County shall have the right to immediately terminate this Agreement.

12.10 Conflicts. Provider agrees that neither it nor its employees will have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Provider's loyal and conscientious exercise of the judgment and care required to perform under this Agreement. Provider further agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against County in any legal or administrative proceeding in which he, she, or Provider is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Provider or any person from in any way representing themselves, including giving expert testimony in support thereof, in any administrative or legal proceeding. Provider agrees

that each of its contracts with subcontractors performing under this Agreement shall contain substantively identical language to ensure that each subcontractor and its officers and employees meet the obligations contained in this paragraph.

12.11 Waiver of Breach. The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach under this Agreement shall not be deemed a waiver of any subsequent breach.

12.12 Compliance with Laws. Provider shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing under this Agreement.

12.13 Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

12.14 Joint Preparation. This Agreement has been jointly prepared by the parties hereto, and shall not be construed more strictly against either party.

12.15 Headings and Interpretation. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires.

12.16 Governing Law, Venue and Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with, and governed by, the laws of the state of Florida. The parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the parties agree that the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, PROVIDER AND COUNTY HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CAUSE OF ACTION OR CLAIM ARISING FROM, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT.**

12.17 Amendments. No modification or amendment to this Agreement shall be effective unless it is in writing and executed by authorized representatives of each party. Without limiting the foregoing, the terms of this Agreement shall prevail over and against any additional or contrary terms and conditions in any format or medium whatsoever including, without limitation, shrinkwrap, click-through, or terms and conditions associated with any upgrade, update, release, patch, or other modification of the Equipment or related software, unless expressly agreed to in writing by an amendment hereto executed by authorized representatives of each party.

12.18 Prior Agreements. This Agreement represents the final and complete understanding of the parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

12.19 HIPAA Compliance. It is understood by the parties that County personnel or their agents have access to protected health information (hereinafter known as "PHI") that is subject to the requirements of 45 C.F.R. § 160, 162, and 164 and related statutory and regulatory provisions. In the event Provider is considered by County to be a covered entity or business associate or otherwise required to comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") or the Health Information Technology for Economic and Clinical Health Act ("HITECH"), Provider shall fully protect individually identifiable health information as required by HIPAA and HITECH. **[Select applicable provision] [If requested by County, Provider shall execute a Business Associate Agreement in the form set forth at [www.broward.org/Purchasing/Pages/StandardTerms.aspx](http://www.broward.org/Purchasing/Pages/StandardTerms.aspx).] [Provider agrees to be bound by the terms of the Business Associate Agreement attached hereto as Exhibit G, which is fully incorporated herein.]** Where required, Provider shall handle and secure such PHI in compliance with HIPAA, HITECH and its related regulations and, if required by HIPAA, HITECH, or other laws, shall include in its "Notice of Privacy Practices" notice of Provider's and County's uses of a client's PHI. The requirement to comply with this provision, HIPAA and HITECH shall survive the expiration or termination of this Agreement. County hereby authorizes the County Administrator to sign Business Associate Agreements if required under this Agreement.

#### 12.20 Payable Interest

12.20.1 Payment of Interest. County shall not be liable to pay any interest to Provider for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Provider waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This subsection shall not apply to any claim interest, including for post-judgment interest, if such application would be contrary to applicable law.

12.20.2 Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, 0.25% (one quarter of one percent) simple interest (uncompounded).

12.21 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference.

12.22 Representation of Authority. Each individual executing this Agreement on behalf of a party hereto represents and warrants that he or she is, on the date of execution, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority. Provider represents that it is an entity authorized to transact business in the State of Florida.

12.23 Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of Section 16½-157 of the Broward County Code of Ordinances, which requires County contractors to provide benefits to domestic partners of their employees, Provider agrees to fully comply with Section 16½-157 during the entire term of the Agreement. If Provider fails to fully comply with that section, such failure shall constitute a material breach which shall allow County to exercise any remedy available under this Agreement, under applicable law, or under section 16½-157. For that purpose, the contract language referenced in Section 16½-157 is incorporated herein as though fully set forth in this paragraph.

12.24 Drug-Free Workplace. It is a requirement of County that it enter into contracts only with firms that certify the establishment of a drug-free workplace in accordance with Chapter 21.31(a)(2) of the Broward County Procurement Code. Execution of this Agreement by Provider shall serve as Provider's required certification that it has or will establish a drug-free workplace in accordance with Section 287.087, Florida Statutes, and Chapter 21.31(a)(2) of the Broward County Procurement Code, and that it will maintain such drug-free workplace for the full term of this Agreement.

12.25 Contingency Fee. Provider represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Provider, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. If County learns that this representation is false, County shall have the right to terminate this Agreement without any further liability to Provider. Alternatively, if such representation is false, County, at its sole discretion, may deduct from the compensation due Provider under this Agreement the full amount of such fee, commission, percentage, gift, or consideration.

12.26 Living Wage Requirement. If Provider is a "covered employer" within the meaning of the Broward County Living Wage Ordinance, Broward County Code sections 26-100 – 26-105, Provider agrees to and shall pay to all of its employees providing "covered services," as defined therein, a living wage as required by such ordinance, and Provider shall fully comply with the requirements of such ordinance. Provider shall be responsible for and shall ensure that all of its subcontractors that qualify as "covered employers" fully comply with the requirements of such ordinance.

12.27 Force Majeure. If the performance of this Agreement, or any obligation hereunder, is prevented by reason of hurricane, earthquake, or other casualty caused by nature, or by labor strike, war, or by a law, order, proclamation, regulation, or ordinance of any governmental agency, the party so affected, upon giving prompt notice to the other party, shall be excused

from such performance to the extent of such prevention, provided that the party so affected shall first have taken reasonable steps to avoid and remove such cause of nonperformance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other party in writing and resume performance hereunder whenever and to the full extent such causes are removed. However, if such nonperformance exceeds sixty (60) days, the party that is not prevented from performance by the force majeure event shall have the right to immediately terminate this Agreement upon written notice to the party so affected. This section shall not supersede or prevent the exercise of any right the parties may otherwise have to terminate this Agreement.

12.28 County Logo. Provider shall not use County's name, logo, or otherwise refer to this Agreement in any marketing or publicity materials without the prior written consent of County.

**[DELETE IF NOT A "COVERED CONTRACT" AT TIME OF CONTRACT AWARD]**

12.29 Workforce Investment Program. This Agreement constitutes a "Covered Contract" under the Broward Workforce Investment Program, Broward County Administrative Code Section 19.211 ("Workforce Investment Program"). Consultant affirms it is aware of the requirements of the Workforce Investment Program and agrees to use good faith efforts to meet the First Source Referral Goal and the Qualifying New Hires Goal as set forth therein, including by (a) publicly advertising any vacancies that are the direct result of this Agreement (whether those vacancies are with Consultant or its subconsultants) exclusively with CareerSource Broward for at least five (5) business days and using good faith efforts to interview any qualified candidates referred under the Workforce Investment Program, and (b) using good faith efforts to hire Qualifying New Hires, as defined by the Workforce Investment Program, for at least fifty percent (50%) of the vacancies that are the direct result of this Agreement. Until at least one year after the conclusion of this Agreement, Consultant shall maintain and make available to County upon request all records documenting Consultant's compliance with the requirements of the Workforce Investment Program, and shall submit the required Workforce Investment Reports to the Contract Administrator annually by January 31 and within thirty (30) days after the conclusion of this Agreement. Failure to demonstrate good faith efforts to meet the First Source Referral Goal and the Qualifying New Hires Goal shall constitute a material breach of this Agreement.

**[DELETE IF NOT APPLICABLE]**

12.30 Additional Security Requirements. Consultant certifies and represents that it will comply with the **[Port Everglades Security Requirements]** **[Airport Security Requirements]** attached hereto and incorporated herein as Exhibit     .

**[DELETE IF NOT APPLICABLE]**

12.31 Federally Funded Contracts. Consultant certifies and represents that it will comply with the Federally Funded Contracts Requirements attached hereto and incorporated herein as Exhibit     .

12.32 Counterparts. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_\_ day of \_\_\_\_\_, 201\_\_, and PROVIDER, signing by and through its \_\_\_\_\_, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through  
its Board of County Commissioners

\_\_\_\_\_  
Broward County Administrator, as  
Ex-officio Clerk of the Broward County  
Board of County Commissioners

By: \_\_\_\_\_  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Insurance requirements approved by  
Broward County  
Risk Management Division:

Approved as to form by  
Joni Armstrong Coffey  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_  
[Name] (Date)  
Assistant County Attorney

ABC/wp  
\_\_\_\_\_.doc  
10/1/2016  
#16-099.01



PROVIDER

WITNESSES:

[PROVIDER NAME]

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Authorized Signor

\_\_\_\_\_  
Print Name of Witness above

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Print Name of Witness above

ATTEST:

\_\_\_\_\_  
Corporate Secretary or other person  
authorized to attest

(CORPORATE SEAL OR NOTARY)

## Exhibit A – Statement of Work

Provider and County agree that Provider shall provide the following work under this Agreement:

### 1. Equipment:

Provider will provide the following Equipment which Provider represents will provide the following functionality:

Quantity	Equipment (Describe manufacturer, model, specifications, etc.)	Functionality/Comments
Quantity	Software or Firmware	Functionality/Comments

**2. Installation:** [Specify the party performing installation, timeframe, and any necessary access, etc.]

### 3. Technical Approach

[Specify as applicable:

- Targeted start and go-live dates
- Functional areas covered
- Security requirements
- Implementation issues
- Post go-live support]

#### A. Responsibilities

[Detail County v. Provider responsibilities, if some shared effort or division of duties]

#### B. Security/Access

Provider will cooperate with County and provide any and all information that County may request in order to determine appropriate security and network access restrictions and verify Provider compliance with County security standards.

[Determine what, if any, access to County systems/network will be required or made available to Provider. Consider:

- What level of access (if any) will Provider be given?
- Should Provider be requested to complete the security assessment questionnaire?]

#### 4. Managerial Approach & Communication

*[This section covers how the project will be managed to a successful conclusion.]*

- Who is the project manager?
- Who is the security point of contact for vendor (for vulnerability/security issue)?
- What will be the reporting structure and frequency?
- Will there be separate technical and managerial?]

Provider and County will adhere to the following communication and reporting schedule unless otherwise agreed in writing by the parties:

*[Detail your communication requirements & expectations: weekly meetings? Monthly reports? Specify. Establish an effective way to communicate the current project status and to share pertinent information.]*

*E.g., Project leads should provide a brief status report that details the progress of tasks along with an updated Project Schedule. All individual reports and schedules should be combined into a master report provided to County on a monthly basis via email to the Contract Administrator, etc.]*

Provider will ensure that the persons responsible for Provider's performance of the Services under this Agreement and, to the extent applicable, identified below (collectively "Key Personnel") are appropriately trained and experienced and have adequate time and resources to perform in accordance with the terms of this Agreement. To the extent Provider seeks or is required to make any change to the composition of the Key Personnel, Provider will provide County with thirty (30) days' advance notice (or as much advance notice as is possible if thirty (30) days' notice is not possible) regarding such changes and the management plan associated with such changes. County shall not be responsible for any additional costs associated with a change in Key Personnel.

Key Personnel:

**[LIST KEY PERSONNEL OF VENDOR BY NAME AND TITLE]**

#### 5. Training

**[Describe whether Provider is providing training and what kind.]**

- Train the trainer, or end user, or what?
- Onsite or webinar?
- How many classes? How many attendees?
- How many hours each class?
- Who provides the training materials?
- Who schedules the training? Etc.]

## **6. Optional Services:**

*[This section spells out any optional services or modules County may seek to purchase later, but price and terms should be specified now to the greatest extent practicable].*

### **a. Transition & Disentanglement Services**

The parties acknowledge and agree that upon the expiration or termination of this Agreement, the good faith efforts of Provider to facilitate the smooth, efficient, and secure transition of data and services to another provider (or to County, to the extent applicable) without any unnecessary interruption or adverse impact on County operations (“Disentanglement”) is a critical objective of the parties and a material obligation of Provider under this Agreement. All obligations of Provider under this Agreement shall be construed consistent with this objective.

At request of County, Provider shall provide prompt, good faith, and reasonable assistance to County in disentangling County data, business, and operations from the Software and, to the extent applicable, transitioning to a new software, system, or provider.

### **b. Additional Equipment**

### **c. Additional Services**

## **7. Final Acceptance Test Plan:**

*[Spell out in detail the Acceptance Criteria, comprised of each step of the test plan and the measures to determine whether each particular element is satisfied. Use detailed and objective criteria.]*

### Exhibit B – Payment Schedule

The rates specified below shall be in effect for the entire term of the Agreement, including any renewal term, unless the contrary is expressly stated below. Any goods or services required under this Agreement for which no specific fee or cost is expressly stated in this Payment Schedule shall be deemed to be included, at no extra cost, within the costs and fees expressly provided for in this Exhibit B.

#### Equipment Fees

Equipment Description	Quantity	Invoicing	Fees
		At Final Acceptance	\$
			\$
			\$
			\$

Equipment fees may only be invoiced upon Final Acceptance.

#### Support and Maintenance Services

Specific Support and Maintenance Services	Unit or Term	Invoicing	Annual Fee
Support and Maintenance Services per Exhibit C	Prior to Final Acceptance, and Year 1 after Final Acceptance	N/A	\$ No Cost
Support and Maintenance Services per Exhibit C	Year 2 after Final Acceptance	Quarterly in arrears	\$
Support and Maintenance Services per Exhibit C	Year 3 after Final Acceptance	Quarterly in arrears	\$
Support and Maintenance Services per Exhibit C	Year 4 after Final Acceptance	Quarterly in arrears	\$

Any travel expenses or fees incurred by Provider under this Agreement shall be the sole responsibility of Provider, unless otherwise expressly stated in this Agreement or applicable Work Authorization.

**Optional Services**

Description	Unit/Term	Invoicing	Fee
Consulting (including Transition & Disentanglement Services)	Hourly	Monthly in arrears	\$ /hour
Additional Training	Hourly	Monthly in arrears	\$ /hour

## **Exhibit C - Support and Maintenance Services**

Provider shall provide both repair service and routine maintenance to the extent necessary in order to ensure continuous optimal functioning of the Equipment for the duration of the Agreement. Provider's support and maintenance obligations include on-site maintenance at any office or location of a Broward County agency, although to the extent reasonable and customary under the circumstances, Provider may provide services electronically.

For repair requests, Regular Response Times as indicated herein shall apply unless critical County operations are affected or the County indicates the repair request is an emergency, in which event the Emergency Service Times shall apply. When the Equipment cannot be repaired on-site and/or if Provider cannot meet the required response times, a replacement component shall be provided and installed by Provider prior to the start of the next County work day, which replacement component must be of equal or better performance and compatible with County's existing systems. Notwithstanding the response time requirements, Provider shall use its continuing best efforts to correct any issue as expeditiously as it can.

Provider will ensure that it maintains adequate stock levels to assure timely delivery of any components that may require maintenance or repair. Provider agrees that its maintenance personnel shall be suitably trained in the operation of the Equipment and associated software and firmware. If, in the reasonable opinion of County, the personnel provided are not acceptable, Provider agrees to provide suitable replacements.

Hours of Service. Throughout the life of the Agreement, Provider shall furnish maintenance service as needed by County (including, to the extent required, on-site at any office or location of a Broward County agency) twenty-four (24) hours a day, seven (7) days a week, including holidays.

Telephone and Email Support. Provider shall provide designated contacts for telephone and email support that will be available during regular County business hours and after hours for specific technical problems and questions.

Routine Maintenance. Routine maintenance provided by Provider shall include the periodic cleaning, adjusting, calibrating, system diagnostics, and fine tuning of the Equipment; replacement or repair of worn parts; prompt installation of any updates, upgrades, or releases of embedded software or firmware; and component replacement with equal or better equipment with the approval of the Contract Administrator when the component is approaching the end of its useful life. Provider shall perform routine maintenance on at least a monthly basis (or more frequently if appropriate as a result of equipment usage or standards set by the Equipment manufacturer). Provider shall contact the end user agency at least three (3) business days prior to arrival for the performance of routine maintenance.

Repair Service. Repair service includes prompt response and resolution of any repair request within the applicable Response Time, which includes identifying the cause of malfunction or

problem; provision of any applicable temporary solutions or workarounds until repair can be completed; permanent repair of the problem; correction, to the extent necessary, of any repercussions of the problem; and thorough inspection of the Equipment post-repair to ensure optimal functioning of the Equipment.

Regular Response Times. Provider shall provide response times as follows from the time Provider receive a repair request from County (calculated according to regular business hours): two (2) hour telephone response, four (4) hour local arrival time (or networked access, if applicable), and eight (8) hour resolution time. All systems are to operate to the user's satisfaction within eight (8) business hours of the initial call to Provider.

Emergency Service Time: Emergency repairs shall be provided within two (2) hours of County's repair request and Provider's repair efforts shall continue without interruption until the issue is resolved. Emergency repairs will be authorized by the Contract Administrator if critical County operations are affected, and shall include whatever action is necessary to return the Equipment's operation to a level that satisfies the user.

Records and Reports. Provider will maintain records and statistics of all maintenance and repair services provided under this Agreement, and provide County with online access to a maintenance and repair ticketing system. This information must include at least the following:

- a) Date, time, and name of contact;
- b) Date and time of telephone response and local arrival;
- c) Equipment being serviced;
- d) All steps and actions taken to maintain the Equipment or repair the problem;
- e) Date and time of maintenance/resolution and County representative notified of maintenance/resolution; and
- f) All equipment and/or labor costs associated with the maintenance or problem resolution.

In addition to the foregoing, Provider shall maintain records and, at the request of County, shall provide monthly reports of the foregoing records and statistics of Provider's average monthly compliance with the required Regular Response Time and Emergency Service Time as well as the repeat trouble rate for all Equipment.

Failure to Meet Required Response or Emergency Service Times. If Provider fails to maintain the required Regular Response Time or Emergency Service Time for any repair request, County may offset against any sums due Provider \$      for each hour that Provider's average response time in the preceding month exceeds the required response times (whether for regular or emergency matters), which the parties agree is a fair and reasonable approximation of County's negative financial impact caused by the delay in Provider's response.



**Exhibit D**  
**Minimum Insurance Requirements**  
*[Use form provided by Risk, not Provider]*

**Exhibit E – Work Authorization Form**  
**WORK AUTHORIZATION FOR AGREEMENT \_\_\_\_\_**

---

Contract Number: \_\_\_\_\_

Work Authorization No. \_\_\_\_\_

---

This Work Authorization is between Broward County and \_\_\_\_\_ (“Provider”) pursuant to the Agreement, executed on \_\_\_\_\_. In the event of any inconsistency between this Work Authorization and the Agreement, the provisions of the Agreement shall govern and control.

**Services to be provided:** [DESCRIBE IN DETAIL]

--

Agreement at issue is \_\_\_ Lump Sum/ \_\_\_ Not-to-Exceed for amount: \$ \_\_\_\_\_

The time period for this Work Authorization will be from the date of complete execution until \_\_\_\_ (\_\_\_\_) days after County’s Notice to Proceed for the Services to be provided under this Work Authorization, unless otherwise extended or terminated by the Contract Administrator.

**Fee Determination:** Payment for services under this Work Authorization is as follows:

Professional Services	\$ _____
General Services	\$ _____
Goods/Equipment	\$ _____
Total Cost of this Work Authorization	\$ _____

The foregoing amounts shall be invoiced by Provider upon written acceptance by County of all goods and services provided under this Work Authorization.

---

**County**

	_____ Contract Administrator                      Date
_____ Project Manager                      Date	_____ Board and/or Designee                      Date

---

**Provider**

	_____ Signed                      Date
_____ Attest	_____ Typed Name
	_____ Title

**If applicable, attach:**

**Exhibit F      CBE Subcontractor Schedule**

**Exhibit G      Business Associate Agreement**

See current form:

<http://www.broward.org/Purchasing/Documents/Standard%20Business%20Associate%20Agreement%20Form.pdf>