

**TECHNOLOGY PRODUCTS AGREEMENT
BETWEEN BROWARD COUNTY AND [REDACTED]**

This Technology Products Agreement ("Agreement") is made and entered by and between Broward County, a political subdivision of the State of Florida ("County"), and [REDACTED], a [REDACTED] corporation ("Contractor") (each a "Party" and collectively referred to as the "Parties").

RECITALS

A. [Insert recitals if applicable]

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1. **Board** means the Board of County Commissioners of Broward County, Florida.
- 1.2. **Business hours** or **business day** means 7 a.m. to 7 p.m. Eastern Time during weekdays that are not County holidays or on which County has not otherwise declared its offices closed.
- 1.3. **Contract Administrator** means the Director of [REDACTED], or Assistant Director of [REDACTED], or such other person designated by same in writing.
- 1.4. **County Business Enterprise** or **CBE** means an entity certified as meeting the applicable requirements of Section 1-81, Broward County Code of Ordinances.
- 1.5. **Documentation** means all manuals, user documentation, specifications, and other related materials pertaining to the Software that Contractor customarily furnishes to licensees of the Software or purchasers of the services covered by this Agreement.
- 1.6. **Equipment** means the hardware and other property listed in Exhibit A being provided to County pursuant to this Agreement, including any embedded software and firmware incorporated therein or customarily provided to purchasers of such hardware or other property.
- 1.7. **Hosted Service** means any subscription-based, hosted (cloud or on-site), or on-demand solution provided to County by Contractor, as further described in Exhibit A.
- 1.8. **License Fee** or **Subscription Fee** means the fee associated with granting County use of the Software or Hosted Service as outlined in Exhibit B (Payment Schedule).
- 1.9. **Notice to Proceed** means a written authorization to proceed with the project, phase, or task, issued by the Contract Administrator.

1.10. **Products** means all Software, Equipment, Hosted Service, and Services provided or required to be provided by Contractor, as further specified in Exhibit A.

1.11. **Purchasing Director** means County's Director of Purchasing as appointed by the Broward County Administrator.

1.12. **Services** means all required installation, integration, programming, configuration, customization, operation, and enhancements of the Products, together with necessary and appropriate consulting, training, and project management services, to meet County's ongoing needs in connection with the Products, as further specified in Exhibit A, as well as any Optional Services procured under this Agreement.

1.13. **Software** means all proprietary or third-party software listed in Exhibit A or other intellectual property rights provided or licensed to County or third party users pursuant to this Agreement, including the computer programs (in machine readable object code form) and any subsequent updates, upgrades, releases, or enhancements thereto developed by Contractor during the term of this Agreement.

1.14. **Subcontractor** means an entity or individual providing services to County through Contractor for all or any portion of the work under this Agreement. The term "Subcontractor" shall include all subconsultants.

1.15. **Support and Maintenance** means the support and maintenance required for County to achieve and maintain optimal performance of the System, including as further described in Exhibit D.

1.16. **System** means the turnkey system provided by Contractor pursuant to this Agreement as part of its Services hereunder, including all Products listed on Exhibit A and any other Products that Contractor will make available to County and third-party users as part of its Services under this Agreement.

ARTICLE 2. EXHIBITS

Exhibit A	Statement of Work
Exhibit B	Payment Schedule
Exhibit C	Security Requirements
Exhibit D	Support and Maintenance Minimum Standards
Exhibit E	Minimum Insurance Coverages
Exhibit F	Work Authorization Form
Exhibit G	Service Level Agreement
Exhibit H	Business Associate Agreement
Exhibit I	[Port Everglades] [Airport] [RESC] Security Requirements
Exhibit __	Federally Funded Contracts Requirements
Exhibit __	[Other exhibits, if any]

ARTICLE 3. SCOPE OF SERVICES & TERMS OF USE

3.1. Scope of Services. Contractor shall perform all work identified in this Agreement including, without limitation, the work specified in Exhibit A (the "Statement of Work"). The Statement of Work is a description of Contractor's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks that are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable.

3.2. Software and Subscriptions Rights.

3.2.1. Software License. Contractor grants to County a perpetual, royalty-free, nonexclusive license to the Software, with no geographical limitations, for the number of users stated in Exhibit A (if none is stated, then an unlimited number of users), including to any embedded third-party software within the Software. This license is granted solely for County purposes, including on and off-site access, and for the benefit of and use by all agencies within County, including the offices of the County constitutional officers. The Software rights granted to County in this Agreement shall not require or otherwise be contingent upon the continuance of Support and Maintenance.

3.2.2. Subscription Rights. Contractor grants to County a royalty-free, nonexclusive right to use the Hosted Service for the duration of this Agreement, with no geographical limitations, for the number of users stated in Exhibit A (if none is stated, then for an unlimited number of users), including the right to use any third-party software or technology embedded in or otherwise required to operate or allow access to the Hosted Service. This right to use is granted solely for County purposes, including on- and off-site access, and for the benefit of and use by all agencies within the County, including the offices of the County constitutional officers.

3.2.3. Authorized Users and Additional Licenses. Unless otherwise stated in Exhibit A (Statement of Work), County and any of its employees, agents, contractors, suppliers, and other third parties authorized by County may concurrently operate and use the Products for County purposes. If anything less than unlimited, concurrent use is expressly provided under this Agreement and additional licenses or users are requested by County, the Purchasing Director is authorized to execute a Work Authorization (in the form of Exhibit F) to purchase additional licenses or users for the fee specified in Exhibit B.

3.2.4. Permitted Hardware and Environments. Unless otherwise stated in Exhibit A, County may install, use, and operate the Software, and access the Hosted Service, on any hardware. County may, at no additional cost: (a) install, use, and operate the Products on separate servers and in any and all development, test, failover, disaster recovery, and backup environments or configurations; (b) if required by reason of an emergency, disaster, or operational need, or for testing of recovery resources, temporarily use the Products on recovery resources, including recovery resources that may not be owned by County; (c) copy the Software for backup and archiving purposes for the purposes of support or maintenance by County or others hired by County to provide such support or maintenance; and (d) utilize a hosted

environment, including without limitation through a third-party hosting provider, for any permitted uses of the Software.

3.2.5. Prohibited Uses. Except as otherwise provided in this Agreement or required under Florida law, County shall not reproduce, publish, or license the Software or Hosted Service to others. County shall not modify, reverse engineer, disassemble, or decompile the Software or the Hosted Service, or any portion thereof, except (a) to the extent expressly authorized in Exhibit A, in which event such authorized actions shall be deemed within the license grant of Section 3.2, or (b) to the extent permitted under any applicable open source license.

3.3. Hosting. All costs to County for the Hosted Service to be provided under this Agreement are included within the Subscription Fee and/or the Support and Maintenance Fee listed on the Payment Schedule (Exhibit B) and will be provided at no additional cost to County, unless otherwise expressly stated in Exhibit B. **[Add if applicable:** Contractor, the Hosted Service, and the System shall comply for the duration of this Agreement with the Service Level Agreement set forth in Exhibit G, unless otherwise expressly approved in writing by the County's Chief Information Officer or his or her designee.]

3.4. Support and Maintenance. For so long as requested by County and for all Products other than the Hosted Service, Contractor shall provide County with Support and Maintenance for the Products and the System as set forth in Exhibit D. Contractor shall provide County with Support and Maintenance for the Hosted Service so long as County pays the Subscription Fee for the Hosted Service stated in Exhibit B. Support and Maintenance shall be invoiced and paid in accordance with the Payment Schedule set forth in Exhibit B, except that for the first year following Final Acceptance, all Support and Maintenance for Software and Equipment is included at no cost to County. County may elect to discontinue or recommence Support and Maintenance for some or all Products upon thirty (30) days prior written notice, and County shall only be obligated to pay for the time periods actually covered by Support and Maintenance at the rates stated in Exhibit B.

3.5. Updates, Upgrades, and Releases. For the duration of this Agreement, Contractor shall promptly provide to County, with advance notice and at no additional cost, any and all software and firmware updates (including error corrections, bug fixes, security updates, and patches), upgrades, and new releases to the Products, including all that Contractor makes available at no additional cost to other licensees of the applicable Products or users of all or part of the System. All such updates, upgrades, and new releases shall remain the sole property of Contractor and shall be deemed to be included within the scope of the license or subscription granted under this Agreement. Installation or implementation of any such update, upgrade, or release in the County's environment requires prior written authorization by the Contract Administrator.

3.6. Compatibility. For the duration of this Agreement, Contractor will ensure the continued compatibility of the Products with all major releases, updates, or upgrades of any third-party software used by County for access or operation of the System, including without limitation Active Directory (AD) and Geographic Information System Mapping (GIS). In the event Contractor is not be able to support any third-party software update, upgrade, or new release that changes

major functionality and is not backwards compatible with the Products, Contractor shall use all reasonable efforts to resolve such issues and to provide optimal functionality of the Software or the Hosted Service in accordance with this Agreement. If Contractor is unable to provide continued optimal functionality of the Products in accordance with this Agreement due to any third-party software release, update, or upgrade, County shall be entitled to a refund of any Support and Maintenance fees or Subscription Fee paid for the affected time period and affected Products and may, at County's sole election, terminate the Agreement upon written notice with no further obligation to Contractor.

3.7. Documentation. Contractor shall deliver copies of the Documentation to County concurrently with delivery of the Products, and thereafter shall promptly provide any updated Documentation as it becomes available during the term of this Agreement. Contractor represents and warrants that the Documentation is sufficiently comprehensive and of sufficient quality to enable a competent user to operate the Products efficiently and in accordance with Exhibit A. County has the right to copy, reproduce, modify, and create derivative works utilizing the Documentation as County deems necessary provided such activities are solely for the purpose of use of the Products as permitted under this Agreement.

3.8. Optional Services. Contractor acknowledges that the 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 set forth in this Agreement or, to the extent applicable, set forth in the Broward County Procurement Code. If any goods or services under this Agreement, or the quantity thereof, are identified as optional ("Optional Services"), County may select the type, amount, and timing of such goods or services pursuant to a work authorization ("Work Authorization") in substantially the form attached as Exhibit F executed by Contractor and County pursuant to this section. No such selection, when combined with those goods or services required under this Agreement, may result in a payment obligation exceeding the applicable maximum amount stated in Section 5.1. Notwithstanding anything to the contrary in this Agreement, Work Authorizations for Optional Services shall be executed on behalf of County as follows: (a) the Contract Administrator may execute Work Authorizations for which the total cost to County in the aggregate is less than \$50,000.00; (b) the Purchasing Director may execute Work Authorizations for which the total cost to County in the aggregate is within the Purchasing Director's delegated authority; and (c) any Work Authorization above the Purchasing Director's delegated authority requires express approval by the Board. Subsequent to the full execution of any Work Authorization, the Contract Administrator will issue a Notice to Proceed for those authorized Optional Services. Contractor shall not commence work on any Work Authorization until after receipt of a purchase order and Notice to Proceed.

OPTIONAL:

3.9. Escrow Agreement. Contractor agrees to place in escrow with a County-approved escrow agent copies of the most current version of the source code for the Software, including all updates, upgrades, and enhancements thereof developed by Contractor during the term of the Agreement. Contractor agrees that upon the occurrence of any event or circumstance which demonstrates with reasonable certainty that Contractor is not fulfilling or is unable to fulfill its

obligations to County under this Agreement (including events such as Contractor's bankruptcy or termination of support for the licensed Software), County shall be entitled to obtain the source code of the then-current Software from the escrow agent. The provisions of this section shall survive the termination of this Agreement. A copy of the fully executed escrow agreement is attached hereto as **Exhibit __**.

ARTICLE 4. TERM AND TIME OF PERFORMANCE

4.1. Term. The term of this Agreement shall begin on the date it is fully executed by the Parties ("Effective Date") and shall end on **_____** ("Initial Term").

4.2. Extensions. County may renew this Agreement for up to **___** additional one (1) year terms (each an "Extension Term") by sending notice of renewal to Contractor at least thirty (30) days prior to the expiration of the then-current term. The Purchasing Director is authorized to exercise this renewal option.

4.3. Additional Extension. If unusual or exceptional circumstances, as determined in the sole discretion of the Purchasing Director, render the exercise of an Extension Term not practicable, or if no extension is available and expiration of this Agreement would, as determined by the Purchasing Director, result in a gap in the provision of services necessary for the ongoing operations of County, then the Purchasing Director may extend this Agreement on the same terms and conditions for period(s) not to exceed three (3) 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]**. The Purchasing Director may exercise this option by written notice to Contractor stating the duration of the extended period, at least thirty (30) days prior to the end of the then-current term.

4.4. Extension Rates and Terms. For any extension beyond the Initial Term, Contractor shall be compensated at the rates in effect when the extension was invoked by County, unless otherwise expressly stated in Exhibit B. Contractor shall continue to provide the Services upon the same terms and conditions as set forth in this Agreement for such extended period.

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

4.6. Timetable. If Contractor 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 all sums paid by County under this Agreement, if any, shall be reimbursed to County by Contractor within fifteen (15) days. For purposes of this section, 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 of the Essence. Unless otherwise agreed by the Parties in writing, all duties, obligations, and responsibilities of Contractor required by Exhibit A of this Agreement shall be

completed no later than . Time is of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

ARTICLE 5. COMPENSATION

5.1. Maximum Amounts. For all goods and services provided under this Agreement, County will pay Contractor up to a maximum amount as follows:

Services/Goods	Term	Not-To-Exceed Amount
Software License Fees and Subscription Fees	Initial Term	\$
Services and Support and Maintenance	Initial Term	\$
Support and Maintenance and Subscription Fees for Extension Terms	Each year Extension Term	\$ per Extension Term \$ all Extension Terms
Reimbursable Expenses	Duration of Agreement	\$
Optional Services	Duration of Agreement	\$
TOTAL NOT TO EXCEED		\$

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

5.2. Method of Billing and Payment.

5.2.1. Contractor may submit invoices for compensation no more often than on a monthly basis, but only after the Services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days after the end of the month covered by the invoice, except that the final invoice must be received no later than sixty (60) days after expiration or earlier termination of this Agreement. 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. Any invoice submitted by Contractor shall be in the amount set forth in Exhibit B for the applicable Services, minus any agreed upon retainage as stated in Exhibit B. Retainage amounts shall only be invoiced to County upon completion of all Services, unless otherwise stated in Exhibit B.

5.2.2. County shall pay Contractor within thirty (30) days of receipt of Contractor's proper invoice, as required under the "Broward County Prompt Payment Ordinance," Section 1-51.6, Broward County Code of Ordinances. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the then-current County form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of Contractor to comply with a term, condition, or requirement of this Agreement. Payment shall be made to Contractor at the address designated in the Notices section.

5.2.3. Contractor shall pay Subcontractors and suppliers within fifteen (15) days following receipt of payment from County for such subcontracted work or supplies. Contractor agrees that if it withholds an amount as retainage from Subcontractors or suppliers, it will release such retainage and pay same within fifteen (15) days following receipt of payment of retained amounts from County. Failure to pay a Subcontractor or supplier in accordance with this subsection shall be a material breach of this Agreement, unless Contractor demonstrates to Contract Administrator's satisfaction that such failure to pay results from a bona fide dispute with the Subcontractor or supplier and, further, Contractor promptly pays the applicable amount(s) to the Subcontractor or supplier upon resolution of the dispute. Contractor shall include requirements substantially similar to those set forth in this subsection in its contracts with Subcontractors and suppliers.

5.3. Reimbursable Expenses. For reimbursement of any travel costs or travel-related expenses permitted under this Agreement, Contractor agrees to comply with Section 112.061, Florida Statutes, except to the extent that Exhibit B expressly provides to the contrary. County shall not be liable for any such expenses that exceed those allowed by Section 112.061 or that have not been approved in writing in advance by the Contract Administrator.

5.4. Subcontractors. Contractor shall invoice all Subcontractor fees, whether paid on a "lump sum" or other basis, to County with no markup. All Subcontractor fees shall be invoiced to County in the actual amount paid by Contractor.

5.5. Withholding by County. Notwithstanding any provision of this Agreement to the contrary, County may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the Contract Administrator or Contractor's failure to comply with any provision of this Agreement. The amount withheld shall not be subject to payment of interest by County.

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

[DELETE IF NOT APPLICABLE]

5.7. Foreign Entity Tax Withholding. Amounts due to certain foreign persons or entities may be subject to backup withholding taxes under federal law. If Contractor is a foreign person or

entity that is required to complete Internal Revenue Service ("IRS") Form W-8ECI, Contractor shall provide County a copy of Contractor's current Form W-8ECI prior to issuance of any invoice or payment under this Agreement. If Contractor fails to timely provide a completed, current Form W-8ECI, County will withhold all backup withholding taxes from the amounts due Contractor, remit such sums to the IRS, and pay Contractor only the remainder. County makes no representation regarding the tax treatment of amounts due to Contractor, and Contractor releases and holds County harmless from any claims or damages in any way relating to or arising from any tax withholding by County pursuant to this section.

ARTICLE 6. DELIVERY, TESTING, AND ACCEPTANCE

6.1. Delivery. Unless otherwise stated in Exhibit A, Contractor shall, within seven (7) days after the Effective Date, make the Software and the Hosted Service available electronically to County. All County license keys, usernames, and passwords shall be authenticated by Contractor and perform according to Exhibit A (Statement of Work).

6.2. Final Acceptance Testing. 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. Within thirty (30) days following completion of all Services stated in Exhibit A relating to the installation, implementation, and integration of the Products and System provided under this Agreement, County shall conduct testing to determine whether the System: (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 Contractor prior to the written confirmation by the County's Chief Information Officer or his or her designee that the Products and System have successfully passed the Final Acceptance Criteria, and such written confirmation shall constitute "Final Acceptance."

6.2.1. The testing period shall commence on the first business day after Contractor informs County in writing that it has completed the Services required to be performed prior to testing and that the System is ready for testing, and shall continue for a period of up to thirty (30) days. During the testing period, County may notify Contractor in writing of any error or defect in the System so that Contractor may make any needed modifications or repairs. If Contractor so elects in writing, testing will cease until Contractor resubmits for Final Acceptance testing, at which time the testing period shall be reset to that of a first submission for testing.

6.2.2. County shall notify Contractor in writing of its Final Acceptance or rejection of the System, or any part thereof, within fifteen (15) days after the end of the testing period, as same may be extended or reset. If County rejects the System, or any part thereof, County shall provide notice identifying the criteria for Final Acceptance that the System failed to meet. Following such notice, Contractor shall have thirty (30) days to (a) modify, repair, or replace the System or any

portion thereof, or (b) otherwise respond to County's notice. If Contractor modifies, repairs, or replaces the System or portion thereof, the testing period shall re-commence consistent with the procedures set forth above in this Section 6.2.

6.2.3. In the event Contractor fails to remedy the reason(s) for County's rejection of the System, or any part thereof, within ninety (90) days after County's initial notice of rejection, County may elect, in writing, to either accept the System as it then exists or to reject the Software and terminate the Agreement or applicable Work Authorization. If County elects to reject the System and terminate the Agreement or applicable Work Authorization, all sums paid by County under the Agreement or applicable Work Authorization shall be reimbursed to County by Contractor within fifteen (15) days after such election is made. If County elects to accept the System as it then exists (partial acceptance), Contractor shall continue to use its best efforts to remedy the items identified in the applicable notice of rejection. If, despite such continuing best efforts, Contractor fails to remedy the issue(s) identified by County within a reasonable time as determined by County, then County shall be entitled to deduct from future sums due under the Agreement the value of the rejected portion of the System as mutually determined by the Parties. If the Parties cannot agree upon such value, County shall have the right to reject the System and terminate the Agreement or applicable Work Authorization on the terms stated above in this paragraph.

ARTICLE 7. CONFIDENTIAL INFORMATION, PROPRIETARY RIGHTS, SECURITY REQUIREMENTS

7.1. Contractor Confidential Information. Contractor represents that the Software and the Hosted Service contain proprietary products and trade secrets of Contractor. Accordingly, to the full extent permissible under applicable law, County agrees to treat the intellectual property within the Software or the Hosted Service as confidential in accordance with this article. Any other material submitted to County that Contractor 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 PRODUCTION – TRADE SECRET." In addition, Contractor 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 Contractor 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 Contractor. Contractor 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 nondisclosure of the Software or any Trade Secret Materials in response to a records request by a third party.

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

7.2.1. County Confidential Information may not, without the prior written consent of County, or as otherwise required by law, be used by Contractor or its employees, agents, subconsultants or suppliers for any purpose other than for the benefit of County pursuant to this Agreement. Neither Contractor 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.

7.2.2. Contractor 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 Contractor or its employees, agents, subconsultants or suppliers regarding the unlawful use or disclosure of County Confidential Information.

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

7.3. Maintenance of Confidential Information. Each party shall advise its employees, agents, subconsultants, and suppliers who receive or otherwise have access to the other party's Confidential Information (as described in Section 7.1 or Section 7.2, as applicable) of their obligation to keep such information confidential, and shall promptly advise the other party in writing if it learns of any unauthorized use or disclosure of said Confidential Information. In addition, the Parties agree to cooperate fully and provide all reasonable assistance to ensure the confidentiality of the other party's Confidential Information as described in this article.

7.4. County Proprietary Rights. Contractor acknowledges and agrees that County retains all rights, title and interest in and to all materials, data, documentation and copies thereof furnished by County to Contractor under this Agreement, including all copyright and other proprietary rights therein, which Contractor as well as its employees, agents, subconsultants, and suppliers may use only in connection with the performance of this Agreement.

7.5. Contractor Proprietary Rights. Except for custom work products, if any, County acknowledges that all copies of the Software (in any form) and the Hosted Service are the sole property of Contractor or third-party licensor. County shall not have any right, title, or interest to any such Software or Hosted Service except as expressly provided in this Agreement and shall

take reasonable steps to secure and protect the Software and the Hosted Service consistent with maintenance of Contractor's proprietary rights therein.

7.6. Data and Privacy. Contractor shall comply with all applicable data and privacy laws and regulations, including without limitation Florida Statutes Section 501.171, and shall ensure that County data processed, transmitted, or stored by Contractor or in the System is not accessed, transmitted, or stored outside the United States. Contractor shall not sell, market, publicize, distribute, or otherwise make available to any third party any personal identification information (as defined by Florida Statutes Section 501.171, Section 817.568, or Section 817.5685, as amended) that Contractor may receive or otherwise have access to in connection with this Agreement, unless expressly authorized in advance by County. If applicable and requested by County, Contractor 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.

7.7. Security Requirements. Contractor, the Products, and the System must meet or exceed all security requirements set forth in Exhibit C at all times throughout the duration of the Agreement, unless otherwise expressly approved in writing by the County's Chief Information Officer or his or her designee. Contractor will cooperate with County and provide any and all information that County may reasonably request to determine appropriate security and network access restrictions and verify Contractor compliance with County security requirements, including as stated in this section.

REMOVE IF NOT APPLICABLE

7.8. Custom Work Products. To the extent this Agreement (including the Statement of Work, any subsequent Work Authorization, any amendment, or the procurement documents relating to this Agreement) identifies deliverables that constitute custom work products that Contractor is required to develop and furnish, the Parties agree that County shall own all rights, title, and interest in and to all such custom work products and that they shall be deemed to constitute "works made for hire" under the United States Copyright Act, 17 U.S.C. § 101. If, for any reason, any custom work product would not be considered a "work made for hire" under applicable law, Contractor hereby exclusively and irrevocably sells, assigns, and transfers to County all of Contractor's rights, title, and interest in and to such custom work product and in and to any copyright or copyright application(s) related thereto. Contractor agrees that neither it nor its agents shall use or disclose any custom work product except for County's benefit as required in connection with Contractor's performance under this Agreement, unless Contractor has obtained County's prior written consent to such use or disclosure. "Custom work product" shall not include any software, copyrighted material, or other proprietary material developed by Contractor or any third party prior to the Effective Date, but shall include any modification(s) thereof developed pursuant to this Agreement. To the full extent applicable, Contractor shall provide County with the source code and object code for all custom work products upon Final Acceptance of the Software or System, or within thirty (30) calendar days after written request by the Contract Administrator, whichever occurs first.

7.9. Injunctive Relief; Survival. 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. The obligations under this article shall survive the termination of this Agreement or of any license granted under this Agreement.

ARTICLE 8. REPRESENTATIONS AND WARRANTIES

8.1. Ownership. Contractor represents and warrants that it is the owner of all right, title, and interest in and to the Software and the Hosted Service or that it has the right to grant to County the rights and the licenses granted under this Agreement, and that Contractor has not knowingly granted rights or licenses to any other person or entity that would restrict rights and licenses granted hereunder, except as may be expressly stated herein.

8.2. Limited Warranty. For the full term of this Agreement, Contractor represents and warrants to County that the Products and System will perform substantially as described in the Documentation and in the Statement of Work (Exhibit A). This warranty does not cover any failure of the Products resulting from (a) use of the Products in a manner other than that for which they were intended; (b) any modification of the Products by County that is not authorized by Contractor; or (c) County's provision of improperly formatted data to be processed through the System.

8.3. Warranty Regarding Viruses and PCI Compliance. Contractor further represents, warrants, and agrees that the Products are free from currently-known viruses or malicious software (at the time the Products and any subsequent versions thereof are provided to County), and that Contractor has and will continue, for the full term of this Agreement, to use commercially reasonable security measures to ensure the integrity of the Products from data leaks, hackers, denial of service attacks, and other unauthorized intrusions. If the Products accept, transmit or store any credit cardholder data, Contractor represents and warrants that the Products comply with the most recent Security Standards Council's Payment Card Industry ("PCI") Payment Application Data Security Standard.

8.4. ADA Compliance. Contractor represents and warrants that the Products and System are, and for the duration of the Agreement will remain, fully accessible and compliant with the American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations, and that the Products and System meet or exceed the World Wide Web Consortium/Web Content Accessibility Guidelines (WCAG) 2.1 Level AA standard or any higher standard as may be adopted by the International Organization for Standardization. Upon request, Contractor will provide the County with any accessibility testing results and written documentation verifying accessibility, as well as promptly respond to and resolve accessibility complaints.

8.5. Intellectual Property Warranty. Contractor represents and warrants that at the time of entering into this Agreement, no claims have been asserted against Contractor (whether or not any action or proceeding has been brought) that allege that any part of the Products or System

infringes or misappropriates any patent, copyright, mask copyright, or any trade secret or other intellectual or proprietary right of a third party, and that Contractor is unaware of any such potential claim. Contractor also agrees, represents and warrants that the Products, System, Services, and Support and Maintenance 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.

8.6. Warranty of Performance. Contractor represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide the Services and Support and Maintenance under this Agreement, and that each person and entity that will provide Services or Support and Maintenance under this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render services. Contractor represents and warrants that the Services and Support and Maintenance under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

8.7. Representation of Authority. Contractor represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Contractor, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Contractor has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to Contractor. Contractor further represents and warrants that execution of this Agreement is within Contractor's legal powers, and each individual executing this Agreement on behalf of Contractor is duly authorized by all necessary and appropriate action to do so on behalf of Contractor and does so with full legal authority.

8.8. Solicitation Representations. Contractor represents and warrants that all statements and representations made in Contractor's proposal, bid, or other supporting documents submitted to County in connection with the solicitation, negotiation, or award of this Agreement, including during the procurement or evaluation process, were true and correct when made and are true and correct as of the date Contractor executes this Agreement, unless otherwise expressly disclosed in writing by Contractor.

8.9. Contingency Fee. Contractor represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

8.10. Truth-In-Negotiation Representation. Contractor's compensation under this Agreement is based upon its representations to County, and Contractor certifies that the wage rates, factual unit costs, and other information supplied to substantiate Contractor's compensation, including without limitation those made by Contractor during the negotiation of this Agreement, are accurate, complete, and current as of the date Contractor executes this Agreement. Contractor's

compensation will be reduced to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

8.11. Public Entity Crime Act. Contractor 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. Contractor 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 Contractor has been placed on the convicted vendor list.

8.12. Discriminatory Vendor and Scrutinized Companies Lists. Contractor represents that it has not been placed on the “discriminatory vendor list” as provided in Section 287.134, Florida Statutes, and that it is not a “scrutinized company” pursuant to Section 215.473, Florida Statutes. Contractor represents and certifies that it is not ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes.

8.13. Claims Against Contractor. Contractor represents and warrants that there is no action or proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of Contractor, threatened against or affecting Contractor, the outcome of which may (a) affect the validity or enforceability of this Agreement, (b) materially and adversely affect the authority or ability of Contractor to perform its obligations under this Agreement, or (c) have a material and adverse effect on the consolidated financial condition or results of operations of Contractor or on the ability of Contractor to conduct its business as presently conducted or as proposed or contemplated to be conducted.

8.14. Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of the Broward County Domestic Partnership Act, Section 16½-157, Broward County Code of Ordinances, Contractor certifies and represents that it will comply with the provisions of Section 16½-157 for the duration of this Agreement. The contract language referenced in Section 16½-157 is deemed incorporated in this Agreement as though fully set forth in this section.

8.15. Breach of Representations. In entering into this Agreement, Contractor acknowledges that County is materially relying on the representations, warranties, and certifications of Contractor stated in this article. County shall be entitled to recover any damages it incurs to the extent any such representation or warranty is untrue. In addition, if any such representation, warranty, or certification is false, County shall have the right, at its sole discretion, to terminate this Agreement without any further liability to Contractor, to deduct from any amounts due Contractor under this Agreement the full amount of any value paid in violation of a representation or warranty, and to recover all sums paid to Contractor under this Agreement. Furthermore, a false representation may result in debarment from County’s procurement activities.

ARTICLE 9. INDEMNIFICATION AND LIMITATION OF LIABILITY

9.1. Indemnification. Contractor shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of Contractor, its officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, Contractor shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. If considered necessary by the Contract Administrator and the County Attorney, any sums due Contractor under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

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

9.3. Limitation of Liability. Neither Contractor 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 Contractor is required to provide under Article 10. 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 Contractor'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 Product, or (iii) any indemnification obligation under this Agreement.

ARTICLE 10. INSURANCE

10.1. For the duration of the Agreement, Contractor shall, at its sole expense, maintain the minimum insurance coverages stated in Exhibit E in accordance with the terms and conditions of this article. Contractor shall maintain insurance coverage against claims relating to any act or omission by Contractor, its agents, representatives, employees, or Subcontractors in connection

with this Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

10.2. Contractor shall ensure that "Broward County" is listed and endorsed as an additional insured as stated in Exhibit E on all policies required under this article.

10.3. On or before the Effective Date, or at least fifteen (15) days prior to commencement of Services, Contractor shall provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article. If and to the extent requested by County, Contractor shall provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.

10.4. Contractor shall ensure that all insurance coverages required by this article shall remain in full force and effect for the duration of this Agreement and until all performance required by Contractor has been completed, as determined by Contract Administrator. Contractor or its insurer shall provide notice to County of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s). Contractor shall ensure that there is no lapse of coverage at any time during the time period for which coverage is required by this article.

10.5. Contractor shall ensure that all required insurance policies are issued by insurers: (1) assigned an A. M. Best rating of at least "A-" with a Financial Size Category of at least Class VII; (2) authorized to transact insurance in the State of Florida; or (3) a qualified eligible surplus lines insurer pursuant to Section 626.917 or 626.918, Florida Statutes, with approval of such insurer by County's Risk Management Division.

10.6. If Contractor maintains broader coverage or higher limits than the minimum insurance requirements stated in Exhibit E, County shall be entitled to any such broader coverage and higher limits maintained by Contractor. All required insurance coverages under this article shall provide primary coverage and shall not require contribution from any County insurance, self-insurance or otherwise, which shall be in excess of and shall not contribute to the insurance required and provided by Contractor.

10.7. Contractor shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit E and submit to County for approval at least fifteen (15) days prior to the Effective Date or commencement of Services. Contractor shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Contractor agrees that any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Contractor agrees to obtain same in endorsements to the required policies.

10.8. Unless prohibited by the applicable policy, Contractor waives any right to subrogation that any of Contractor's insurer may acquire against County, and agrees to obtain same in an endorsement of Contractor's insurance policies.

10.9. Contractor shall require that each Subcontractor maintains insurance coverage that adequately covers the work provided by that Subcontractor on substantially the same insurance terms and conditions required of Contractor under this article. Contractor shall ensure that all such Subcontractors comply with these requirements and that "Broward County" is named as an additional insured under the Subcontractors' applicable insurance policies.

10.10. In the event Contractor or any Subcontractor fails to maintain the insurance required by this Agreement, County may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Contractor. Contractor shall not permit any Subcontractor to provide work under this Agreement unless and until the requirements of this article are satisfied. If requested by County, Contractor shall provide, within one (1) business day, evidence of each Subcontractor's compliance with this section.

10.11. If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the Effective Date; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in Exhibit E, and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date, Contractor must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Agreement for at least the duration stated in Exhibit E.

ARTICLE 11. TERMINATION

11.1. This Agreement may be terminated for cause by the aggrieved Party if the Party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved Party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by County, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience and shall be effective thirty (30) days after such notice of termination for cause is provided.

11.2. This Agreement may be terminated for cause by County for reasons including, but not limited to, any of the following:

11.2.1. Contractor's failure to suitably or continuously perform any required work in a manner calculated to meet or accomplish the objectives in this Agreement or Work

Authorization, or repeated submission (whether negligent or intentional) for payment of false or incorrect bills or invoices;

11.2.2. By the Contract Administrator or the Director of Office of Economic and Small Business Development ("OESBD") for any fraud, misrepresentation, or material misstatement by Contractor in the award or performance of this Agreement or that otherwise violates any applicable requirement of Section 1-81, Broward County Code of Ordinances; or

11.2.3. By the Director of OESBD upon the disqualification of Contractor as a CBE if Contractor's status as a CBE was a factor in the award of this Agreement and such status was misrepresented by Contractor, or upon the disqualification of one or more of Contractor's CBE participants by County's Director of OESBD if any such participant's status as a CBE firm was a factor in the award of this Agreement and such status was misrepresented by Contractor during the procurement or the performance of this Agreement.

11.3. Notice of termination shall be provided in accordance with the "Notices" section of this Agreement except that notice of termination by the County Administrator to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

11.4. If this Agreement is terminated for convenience by County, Contractor shall be paid for any work properly performed through the termination date specified in the written notice of termination, subject to any right of County to retain any sums otherwise due and payable. Contractor acknowledges that it has received good, valuable, and sufficient consideration for County's right to terminate this Agreement for convenience in the form of County's obligation to provide advance notice to Contractor of such termination in accordance with Section 11.1.

11.5. In addition to any right of termination stated in this Agreement, County shall be entitled to seek any and all available remedies, whether stated in this Agreement or otherwise available at law or in equity.

ARTICLE 12. EQUAL EMPLOYMENT OPPORTUNITY AND CBE AND SBE COMPLIANCE

12.1. No Party 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. Contractor shall include the foregoing or similar language in its contracts with any Subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

12.2. Contractor shall comply with all applicable requirements of Section 1-81, Broward County Code of Ordinances, in the award and administration of this Agreement. Failure by Contractor 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 exercise any other remedy

provided under this Agreement, the Broward County Code of Ordinances, the Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

[DELETE REMAINDER OF ARTICLE IF NOT APPLICABLE]

12.3. Contractor will meet the required CBE goal by utilizing the CBE firms listed in **Exhibit __** (or a CBE firm substituted for a listed firm, if permitted) for **__** percent (**__**%) of total Services (the "Commitment").

[USE FOLLOWING INSTEAD IF A CBE RESERVE PROJECT] The Parties acknowledge that County has reserved this procurement solely for performance by CBE firms; therefore the CBE goal is one hundred percent (100%) of total Services under this Agreement (the "Commitment"). Contractor is a CBE firm and agrees that it will meet the Commitment by Contractor performing the Services without subcontracting, or by Contractor performing at least fifty percent (50%) of the Services and subcontracting the remainder to CBE firms listed in **Exhibit __** (or CBE firms substituted or approved by OESBD during the term of this Agreement).

12.4. In performing the Services, Contractor shall utilize the CBE firms listed in **Exhibit __** for the scope of work and the percentage of work amounts identified on each Letter of Intent. Promptly upon execution of this Agreement by County, Contractor shall enter into formal contracts with the CBE firms listed in **Exhibit __** and, upon request, shall provide copies of the contracts to the Contract Administrator and OESBD.

12.5. Each CBE firm utilized by Contractor to meet the CBE goal must be certified by OESBD. Contractor shall inform County immediately when a CBE firm is not able to perform or if Contractor believes the CBE firm should be replaced for any other reason, so that OESBD may review and verify the good faith efforts of Contractor to substitute the CBE firm with another CBE firm. Whenever a CBE firm is terminated for any reason, Contractor shall provide written notice to OESBD and, upon written approval of the Director of OESBD, shall substitute another CBE firm in order to meet the CBE goal, unless otherwise provided in this Agreement or agreed in writing by the Parties. Such substitution shall not be required if the termination results from modification of the Scope of Services and no CBE firm is available to perform the modified Scope of Services; in which event, Contractor shall notify County, and OESBD may adjust the CBE goal by written notice to Contractor. Contractor shall not terminate a CBE firm for convenience without County's prior written consent, which consent shall not be unreasonably withheld.

12.6. The Parties stipulate that if Contractor fails to meet the Commitment, the damages to County arising from such failure are not readily ascertainable at the time of contracting. If Contractor fails to meet the Commitment and County determines, in the sole discretion of the OESBD Program Director, that Contractor failed to make Good Faith Efforts (as defined in Section 1-81, Broward County Code of Ordinances) to meet the Commitment, Contractor shall pay County liquidated damages in an amount equal to fifty percent (50%) of the actual dollar amount by which Contractor failed to achieve the Commitment, up to a maximum amount of ten percent (10%) of the total contract amount excluding costs and reimbursable expenses. An example of this calculation is stated in Section 1-81.7, Broward County Code of Ordinances. As

elected by County, such liquidated damages amount shall be either credited against any amounts due from County, or must be paid to County within thirty (30) days after written demand. These liquidated damages shall be County's sole contractual remedy for Contractor's breach of the Commitment, but shall not affect the availability of administrative remedies under Section 1-81. Any failure to meet the Commitment attributable solely to force majeure, changes to the scope of work by County, or inability to substitute a CBE Subcontractor where the OESBD Program Director has determined that such inability is due to no fault of Contractor, shall not be deemed a failure by Contractor to meet the Commitment.

12.7. Contractor acknowledges that the Board, acting through OESBD, may make minor administrative modifications to Section 1-81, Broward County Code of Ordinances, which shall become applicable to this Agreement if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to Contractor and shall include a deadline for Contractor to notify County in writing if Contractor concludes that the modification exceeds the authority under this section. Failure of Contractor to timely notify County of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by Contractor.

12.8. County may modify the required participation of CBE firms in connection with any amendment, extension, modification, change order, or Work Authorization to this Agreement that, by itself or aggregated with previous amendments, extensions, modifications, change orders, or Work Authorizations, increases the initial Agreement price by ten percent (10%) or more. Contractor shall make a good faith effort to include CBE firms in work resulting from any such amendment, extension, modification, change order, or Work Authorization, and shall report such efforts, along with evidence thereof, to OESBD.

12.9. Contractor shall provide written monthly reports to the Contract Administrator attesting to Contractor's compliance with the CBE goal stated in this article. In addition, Contractor shall allow County to engage in onsite reviews to monitor Contractor's progress in achieving and maintaining Contractor's contractual and CBE obligations. The Contract Administrator in conjunction with OESBD shall perform such review and monitoring, unless otherwise determined by the County Administrator.

12.10. The Contract Administrator may increase allowable retainage or withhold progress payments if Contractor fails to demonstrate timely payments of sums due to all Subcontractors and suppliers. The presence of a "pay when paid" provision in a Contractor's contract with a CBE firm shall not preclude County or its representatives from inquiring into allegations of nonpayment.

ARTICLE 13. MISCELLANEOUS

13.1. Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with Contractor to manage and supervise the performance of this Agreement. Unless expressly stated otherwise in this Agreement or otherwise set forth in an applicable provision of the Broward County Procurement Code, Broward County Code of

Ordinances, or Broward County Administrative Code, the Contract Administrator may exercise any ministerial authority in connection with the day-to-day management of this Agreement. The Contract Administrator may approve in writing minor modifications to the Scope of Services provided that such modifications do not increase the total cost to County or waive any rights of County.

13.2. Rights in Documents and Work. Any and all reports, photographs, surveys, documents, materials, or other work created by Contractor in connection with performing Services shall be owned by County, and Contractor hereby transfers to County all right, title, and interest, including any copyright or other intellectual property rights, in or to the work. Upon termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Contractor, whether finished or unfinished, shall become the property of County and shall be delivered by Contractor to the Contract Administrator within seven (7) days after termination of this Agreement. Any compensation due to Contractor may be withheld until all documents are received as provided in this Agreement. Contractor shall ensure that the requirements of this section are included in all agreements with its Subcontractor(s).

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

13.3.1. Keep and maintain public records required by County to perform the work required under this Agreement;

13.3.2. 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;

13.3.3. 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

13.3.4. Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of Contractor or keep and maintain public records required by County to perform the services. If Contractor transfers the records to County, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt. If Contractor keeps and maintains the public records, Contractor 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.

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. Contractor will provide any requested records to County to enable County to respond to the public records request.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'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.

13.4. Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of Contractor and its Subcontractors that are related to this Agreement. Contractor and its Subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement and performance under this Agreement. All such books, records, and accounts 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, Contractor or its Subcontractor shall make same available in written form at no cost to County.

Contractor and its Subcontractors shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for at least three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). Contractor hereby grants County the right to conduct such audit or review at Contractor'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 Contractor in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of County's audit shall be reimbursed to County by Contractor in addition to making adjustments for the overcharges. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of County's findings to Contractor.

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

13.5. Independent Contractor. Contractor is an independent contractor of County, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In providing Services, neither Contractor nor its agents shall act as officers,

employees, or agents of County. Contractor shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

13.6. Regulatory Capacity. Notwithstanding the fact that County is a political subdivision with certain regulatory authority, County's performance under this Agreement is as a Party to this Agreement and not in its regulatory capacity. If County exercises its regulatory authority, the exercise of such authority and the enforcement of any rules, regulation, laws, and ordinances shall have occurred pursuant to County's regulatory authority as a governmental body separate and apart from this Agreement, and shall not be attributable in any manner to County as a party to this Agreement.

13.7. Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County nor shall anything included herein be construed as consent by County to be sued by third parties in any matter arising out of this Agreement. County is a political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes.

13.8. Third-Party Beneficiaries. Neither Contractor nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

13.9. 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, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR COUNTY:

Broward County [REDACTED]
Attn: [REDACTED]
115 South Andrews Avenue, Room [REDACTED]
Fort Lauderdale, Florida 33301
Email address: [REDACTED]

FOR CONTRACTOR:

[REDACTED]
[REDACTED]
[REDACTED]
Email address: [REDACTED]

13.10. Assignment. All Subcontractors must be expressly identified in this Agreement or otherwise approved in advance and in writing by County's Contract Administrator. Except for subcontracting approved by County in advance, neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by Contractor without the prior written consent of County. Any assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit County to immediately terminate this Agreement, in addition to any other remedies available to County at law or in equity.

13.11. Conflicts. Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. During the term of this Agreement, none of Contractor's officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which he, she, or Contractor 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 that 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 Contractor or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. If Contractor is permitted pursuant to this Agreement to utilize Subcontractors to perform any Services required by this Agreement, Contractor shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as Contractor.

13.12. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. County's failure 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 of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

13.13. Compliance with Laws. Contractor, the Products, the Services, and Support and Maintenance must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations, including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.

13.14. Severability. If 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.

13.15. Joint Preparation. This Agreement has been jointly prepared by the Parties, and shall not be construed more strictly against either Party.

13.16. Interpretation. The titles and 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. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to “days” means calendar days, unless otherwise expressly stated.

13.17. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of Articles 1 through 13 of this Agreement, the provisions contained in Articles 1 through 13 shall prevail and be given effect. **[TAILOR IF NECESSARY]**

13.18. Law, Jurisdiction, Venue, 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 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 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, CONTRACTOR AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS’ FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

13.19. Amendments. No modification, amendment, or alteration in the terms or conditions contained in this Agreement shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by duly authorized representatives of County and Contractor.

13.20. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter 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.

13.21. HIPAA Compliance. County has access to protected health information ("PHI") that is subject to the requirements of 45 C.F.R. Parts 160, 162, and 164 and related regulations. If Contractor is considered by County to be a covered entity or business associate or is 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"), Contractor shall fully protect individually identifiable health information as required by HIPAA or HITECH. **[Select applicable provision]** [If requested by County, Contractor shall execute a Business Associate Agreement in the form set forth at www.broward.org/Purchasing/Pages/StandardTerms.aspx.] [Contractor agrees to be bound by the terms of the Business Associate Agreement attached hereto as Exhibit H, which is fully incorporated herein.] The County Administrator is authorized to execute a Business Associate Agreement on behalf of County. Where required, Contractor shall handle and secure such PHI in compliance with HIPAA, HITECH, and related regulations and, if required by HIPAA, HITECH, or other laws, include in its "Notice of Privacy Practices" notice of Contractor's and County's uses of client's PHI. The requirement to comply with this section, HIPAA, and HITECH shall survive the expiration or earlier termination of this Agreement. Contractor shall ensure that the requirements of this section are included in all agreements with its Subcontractors.

13.22. Payable Interest

13.22.1. Payment of Interest. County shall not be liable to pay any interest to Contractor for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Contractor 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 for interest, including for post-judgment interest, if such application would be contrary to applicable law.

13.22.2. 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, one quarter of one percent (0.25%) simple interest (uncompounded).

13.23. Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

13.24. Prevailing Wage Requirement. If construction work in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) is required of, or undertaken by, Contractor as a result of this Agreement, Section 26-5, Broward County Code of Ordinances, shall be deemed to apply to such construction work. Contractor shall fully comply with the requirements of such ordinance and shall satisfy, comply with, and complete the requirements set forth in **Exhibits** ___ and ___.

13.25. Counterparts and Multiple Originals. 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.

13.26. Use of County Logo. Contractor 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.

13.27. Drug-Free Workplace. To the extent required under Section 21.31(a)(2), Broward County Administrative Code, or Section 287.087, Florida Statutes, Contractor certifies that it has a drug-free workplace program that it will maintain such drug-free workplace program for the duration of this Agreement.

13.28. Living Wage Requirement. If Contractor is a "covered employer" within the meaning of the Broward County Living Wage Ordinance, Sections 26-100 through 26-105, Broward County Code of Ordinances, Contractor agrees to and shall pay to all of its employees providing "covered services," as defined in the ordinance, a living wage as required by such ordinance, and Contractor shall fully comply with the requirements of such ordinance. Contractor shall ensure all of its Subcontractors that qualify as "covered employers" fully comply with the requirements of such ordinance.

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

13.29. Workforce Investment Program. This Agreement constitutes a "Covered Contract" under the Broward Workforce Investment Program, Section 19.211, Broward County Administrative Code ("Workforce Investment Program"). Contractor 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 the Workforce Investment Program, including by (a) publicly advertising exclusively with CareerSource Broward for at least five (5) business days any vacancies that are the direct result of this Agreement (whether those vacancies are with Contractor or its Subcontractors) 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, Contractor shall maintain and make available to County upon request all records documenting Contractor'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]

13.30. Additional Security Requirements. Contractor shall comply with the [Port Everglades Security Requirements] [Airport Security Requirements] [RESC Security Requirements] attached hereto as Exhibit [].

[DELETE IF NOT APPLICABLE]

13.31. Federally Funded Contracts. Contractor shall comply with the Federally Funded Contracts Requirements attached hereto as Exhibit .

(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
_____, 20____, and Contractor, signing by and through its
_____ duly authorized to execute same.

COUNTY

ATTEST:

Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

BROWARD COUNTY, by and through
its Board of County Commissioners

By: _____

_____ day of _____, 20____

Approved as to form by
Andrew J. Meyers
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] (Date)
Assistant County Attorney

By: _____
[Name] (Date)
Deputy County Attorney

ABC/wp
[Name of doc]
12/09/2019
#_____

**TECHNOLOGY PRODUCTS AGREEMENT
BETWEEN BROWARD COUNTY AND**

CONTRACTOR

WITNESSES:

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

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

1. Project Request

[Insert description of project request and solution.]

Contractor represents that the System, Products, and Services provided under this Agreement will provide this functionality and solution.

2. Services Description

[Insert overview of services.]

A. **Software.** Contractor will provide the following Software under this Agreement:

Software Suite, Version & Module	Quantity & Type of License (e.g., Enterprise, User, Third-Party)	Describe Purpose, Functionality & Expected Operation of Software

Third-Party Software provided by Contractor	Quantity & Type of License (e.g., Enterprise, User, Third-Party)	Describe Purpose, Functionality & Expected Operation of Software

B. **Designated Equipment.** [If use is limited to certain designated equipment, include this section and limit use to the Designated Equipment; if not, delete this section.] Any equipment that meets or exceeds the following minimum specifications shall constitute “Designated Equipment”:

[Insert minimum specifications for equipment utilizing the Software, or otherwise describe Designated Equipment.]

C. **Equipment.**

Contractor shall provide the following equipment:

Quantity	Equipment <i>(identify by model number or other specific identification)</i>	Comments

County shall provide the following equipment:

Quantity	Equipment <i>(identify by model number or other specific identification)</i>	Comments

3. **Technical Approach**

A. **Phases.** The Services will be provided in the following Phases:

B. **Implementation**

C. **Interfaces**

[Identify all required interfaces and describe; specify Peoplesoft, GIS, etc.]

D. **Responsibilities**

E. **Roles/Access Limitations**

4. Managerial Approach

Contractor will ensure that the persons responsible for Contractor'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 Contractor seeks or is required to make any change to the composition of the Key Personnel, Contractor will provide County with thirty (30) days' advance written 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.

The Key Personnel shall be as follows:

[LIST KEY PERSONNEL OF CONTRACTOR]

Contractor Participants:	Role	Email	Address/Phone

5. Training

The following training will be provided as part of the Services under this Agreement:

[List training courses, types (e.g., "train the trainer"), minimum hours/attendees, required documentation, etc.]

6. Communication & Reports

[Establish an effective way to communicate the current project status and to share pertinent information. 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 version to generate an overall initiative status report.]

A. Meetings/Communication

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

[Insert communication/reporting schedule]

B. Required Reporting

7. [Add any other provisions for how the project will be managed to a successful conclusion.]

8. Deliverable Products and Services

Contractor shall provide the following Deliverables, which shall be considered preliminarily accepted by County only upon written notice by Contract Administrator that the Deliverable meets the applicable Requirements or Preliminary Acceptance Criteria.

DELIVERABLES: Phase One

No.	Description	Duration/Deadline	Requirements or Preliminary Acceptance Criteria

DELIVERABLES: Phase

No.	Description	Duration/Deadline	Requirements or Preliminary Acceptance Criteria
	FINAL ACCEPTANCE		Written confirmation by County of successful completion of Acceptance Test Plan

9. 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.]

[Customize FA test below as appropriate.]

No.	Deliverable	Final Acceptance Test Criteria	Pass/Fail
1.			
2.	ADA Compliance	Products and System are fully accessible and compliant with the American with Disabilities Act, 42 U.S.C. § 12101, and Section 504 of the Rehabilitation Act of 1973, and meet or exceed the World Wide Web Consortium/Web Content Accessibility Guidelines (WCAG) 2.1 Level AA standard.	
3.	GIS Integration	Products fully interface with County's GIS technology, including Esri products.	
4.	Using Agency Technical Acceptance	Products, Services, and System meet or exceed the technical requirements stated in the Agreement or any applicable exhibits	
5.			
6.			
7.			
8.			

10. Optional Services:

a. Transition & Disentanglement Services

The Parties acknowledge and agree that upon the expiration or termination of this Agreement, the good faith efforts of Contractor 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 Contractor under this Agreement. All obligations of Contractor under this Agreement shall be construed consistent with this objective.

At request of County, Contractor 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 Products and Support and Maintenance

County may from time to time purchase from Contractor any additional products, including without limitation software licenses or subscriptions, firmware, equipment, modules, and/or support and maintenance. If and to the extent the County so elects to purchase such Optional Services via a purchase order or a Work Authorization (with an accompanying Statement of Work,

if applicable), as County determines appropriate, the Optional Services shall be subject to any applicable not-to-exceed amounts otherwise set forth in this Agreement.

c. Professional Services

County may from time to time purchase from Contractor any professional services (such as consulting, professional services, training, or other hourly services). If and to the extent the County so elects to purchase additional services via a purchase order or a Work Authorization (with an accompanying Statement of Work, if applicable), as County determines appropriate, the additional services shall be subject to any applicable not-to-exceed amounts otherwise set forth in this Agreement.

Exhibit B – Payment Schedule

The rates specified below shall be in effect for the duration of the Agreement unless otherwise 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.

Software/Subscription Fees

Software Description	License Term	Invoicing	Fees
[Software License Fee]	Perpetual	At Final Acceptance	\$
[Subscription Fee or Hosting Services]	Annual	At Final Acceptance	\$
Training	Hourly	N/A	___ hours included in Year 1 at no cost
			\$

Software License Fees shall commence only upon the date of Final Acceptance.

Support and Maintenance Services Fees

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

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

Optional Services or Additional Software/Licenses

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

Exhibit C – Security Requirements

Exhibit D - Support and Maintenance Minimum Standards

Contractor shall provide County with Support and Maintenance so as to ensure and maintain optimal performance of the Products and System consistent with the Statement of Work and the Documentation, which service shall include the following:

- Timely response and resolution of any errors, defects, malfunctions, or other issues affecting the use or performance of the Products or System (collectively, “Events”) in keeping with the Required Response Times stated below;
- Providing and facilitating the installation of updates, upgrades, and releases as they are made available to Contractor’s other clients;
- Notifying County of patches and updates affecting security, and applying, testing, and validating the appropriate patches and updates and/or workarounds on a test version of the application before distribution.
- On-call availability via telephone and e-mail during normal business hours to receive and respond to inquiries or questions from County regarding use, operation, or functionality of the Products or System;
- Emergency availability via telephone and e-mail after hours to receive and respond to specific technical problems and questions relating to the operation or functionality of the Products or System;
- Use of ongoing best efforts to maintain the optimal functioning of the Products and System, to correct programming and coding errors, and to provide solutions to known errors affecting the operation of the Software;
- Routine notification to County as it becomes available of new or updated information pertaining to the Products, System, or the Documentation.

Support and Maintenance shall be provided via telephone, electronic communication, on-site, or as otherwise appropriate to address the issue. Any update, upgrades, releases, or other modifications to the Software shall be provided via electronic communication and for download via the Internet, if practicable. To the extent necessary to resolve an Event or other support request, Contractor shall provide support on-site at any office or location of a Broward County agency. Contractor agrees that its personnel shall be suitably trained in the operation, support and maintenance of the Software. If in the reasonable opinion of County, the personnel provided are not acceptable, Contractor agrees to provide suitable replacements.

Required Response Times. Upon notice by County of an Event, Contractor shall address and resolve the Event consistent with the following priority, response and resolution levels:

Priority Description	Definition	Response Time After Notice	Resolution Time after Notice
Critical	Event that renders the Products, System, and/or	1 hour during normal business hours; or within 1 hour of	Work until corrected

Priority Description	Definition	Response Time After Notice	Resolution Time after Notice
	interfaces inoperable or allows unauthorized access.	beginning of next business day if outside of normal business hours	
Severe	Event that results in a significant impairment of performance of the Products or System or impairs essential operations or allows unauthorized access.	1 hour during normal business hours; or within 1 hour of beginning of next business day if outside of normal business hours	Work until corrected during normal business hours
Minor	Event that has minor impact to County's business and that does not impact normal operation of the Products or System.	2 hours during normal business hours; or next business day if outside of normal business hours	Future patch or release
Minimal	Event that has minimal impact or no impact on County's business.	2 hours during normal business hours; or next business day if outside of normal business hours	Future release

Notwithstanding the above-stated schedule, Contractor shall use its continuing best efforts to correct the Event as expeditiously as it can. The Priority Description for each error or issue shall be reasonably determined by the Contract Administrator.

Records and Reports. Contractor will maintain records of all Support and Maintenance requested and/or provided, and provide County with online access to an Event ticketing system, which shall include at least the following:

- a) Date, time, and name of contact for each Event;
- b) Date and time of response by Contractor;
- c) Description of Event and analysis of error, defect, or other issue causing Event;
- d) All steps and actions taken to resolve the Event;
- e) Date and time of resolution and County representative notified of resolution; and
- f) All equipment and/or labor costs associated with resolution.

At the request of County, Contractor shall provide monthly reports of the foregoing records as well as statistics of Contractor's average monthly compliance with the Required Response Times.

Failure to Meet Required Response Times. If Contractor fails to meet the Required Response Times, County may offset against any sums due Contractor by \$ for each Event that Contractor failed to meet the Required Response Time, which amount the Parties agree is a fair and reasonable approximation of County's negative financial impact caused by the delay in Contractor's response.

DownTime Maintenance Credit. If a Severe or Critical Event is not resolved or reduced to Minor or Minimal priority level within two (2) business hours after notice to Contractor, Contractor will refund to County five percent (5%) of the monthly fee (or monthly pro rata equivalent, if the fee is other than monthly) for Support and Maintenance for each additional business hour that the Event remains unresolved or at the Severe or Critical priority level, unless the Contract Administrator determines, in his or her sole discretion, that Contractor utilized best efforts to implement and is actively pursuing an appropriate plan for prompt resolution. Such refunds will be paid within ten (10) days or, at County's option, may be credited against future sums due to Contractor. This refund shall be in addition to any other remedy that is available in the event of a breach of the Agreement.

Exhibit E – Minimum Insurance Requirements

[Use form provided by Risk, not Contractor]

Exhibit F – Work Authorization Form
WORK AUTHORIZATION FOR AGREEMENT _____

Contract Number: _____

Work Authorization No. _____

This Work Authorization is between Broward County and _____ (“Contractor”) 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 Contractor 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

Contractor

_____		Signed	Date
Attest	_____	Typed Name	_____
		Title	_____

If applicable, attach:

Exhibit G – Service Level Agreement

See Service Level Agreement

If applicable, attach:

Exhibit __ – Business Associate Agreement

See current form:

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