



**ERP MASTER SERVICES AGREEMENT BETWEEN BROWARD COUNTY AND CEDARCRESTONE,
INC. FOR CENTRALIZED ENTERPRISE RESOURCE PLANNING (ERP) SOLUTION**

RLI No. R0866301R2

This Master Services Agreement ("MSA" or "Agreement") is made and entered into by and between Broward County, a political subdivision of the State of Florida ("County") and CedarCrestone, Inc., an active Delaware corporation authorized and registered to do business in the state of Florida ("Contractor," "CedarCrestone," or "CCI") (County and Contractor collectively referred to as the "Parties" or "parties").

RECITALS

A. County desires to engage an entity to provide an enterprise resource planning ("ERP") solution for County, and solicited proposals for ERP software and implementation and hosting services including through RLI No. R0866301R2 (the "RLI"). Of the short-listed vendors responding to the RLI, Contractor was first-ranked and approved by the Board of County Commissioners pursuant to a Motion to Approve the final ranking on December 3, 2013.

B. Contractor represents that it has the experience necessary to adequately and competently perform the services; and

C. County wishes to engage Contractor to provide services under this Agreement containing mutually satisfactory terms and covenants; and

D. Negotiations pertaining to the services to be performed and the compensation therefor were undertaken between County and Contractor, and this Agreement incorporates the results of such negotiations; and

E. The Board hereby determines that the services and expenditure of public funds will serve a public purpose; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, County and Contractor agree as follows:

ARTICLE 1 DEFINITIONS AND IDENTIFICATIONS

1.1 Acceptance Criteria means the criteria based upon which County accepts or rejects each Deliverable.

1.2 Acceptance Testing means conducting of the series of tests and protocols for Deliverables, as generally described in the applicable SOW, upon the successful completion of which signifies the successful delivery of the applicable Deliverable.

1.3 Agreement means this document, Articles 1-16, inclusive, and any Work Authorizations, Statement of Work(s), and/or amendments hereto or thereto. Other terms and conditions are included in the Exhibits which are expressly incorporated by reference. This Agreement includes and incorporates the following Exhibits:

| | |
|-------------|--|
| Exhibit A | Statements of Work ("SOW") |
| Exhibit A-1 | Implementation SOW |
| Exhibit A-2 | Hosting SOW |
| Exhibit A-3 | Managed Services SOW |
| Exhibit B | Payment Schedules and Sample Invoice |
| Exhibit B-1 | Implementation Payment Schedule |
| Exhibit B-2 | Hosting Payment Schedule |
| Exhibit B-3 | Managed Services Payment Schedule |
| Exhibit C | Work Authorization Form |
| Exhibit D | Business Associate Agreement |
| Exhibit E | Schedule of CBE Participation |
| Exhibit F | Monthly Utilization Report |
| Exhibit G | Hosting Services Supplemental Terms and Conditions ("HSS") |
| Exhibit H | Schedule of Application Software |

1.4 Affiliate(s) of the Contractor means Adrenaline Resources, Inc.; Analytic Vision, Inc.; CedarCrestone Software India, Private Ltd.; IO Consulting, Inc.; Sierra Systems US, Inc.; and Sierra Systems Group Inc.

1.5 Application Software means the application and technology software and specific modules that County has licensed from the Application Software vendor(s) listed in Exhibit H, and which the Contractor has agreed to host and/or maintain as part of the Hosting Services.

1.6 Assumption means the general assumptions for the Services as listed in each SOW. The assumptions are subject to modification or supplementation by the Parties through use of a fully executed Work Authorization.

1.7 Board means the Board of County Commissioners of Broward County, Florida, which is the governing body of the Broward County government created by the Broward County Charter.

1.8 Business Day means Monday through Friday of each week, except for County or CCI established holidays. Holidays are defined as the following: New Year's Day; Martin Luther King, Jr. Day; Memorial Day; Independence Day; Labor Day; Veterans Day; Thanksgiving Day; the day after Thanksgiving; and Christmas Day.

1.9 Business Hours means between 7:00 a.m. and 7:00 p.m. Eastern time each Business Day.

1.10 CCI Technology means CCI's technology, including, but not limited to, CCI's Hosting Services, Internet operations design, content, software tools, Hardware and/or hardware designs, algorithms, system software, software created by CCI (in source and object forms), user interface designs, architecture, products, documentation (both printed and electronic), Hosting Documentation, network designs, Know-How (as defined in Section 15.4), trade secrets, and any related intellectual property rights worldwide (whether owned by CCI or licensed to CCI from a third party) and also including any derivatives, improvements, modifications, enhancements, or extensions of CCI Technology conceived, reduced to practice, or developed prior to or during the term of this Agreement.

1.11 Contract Administrator means the ERP Project Administrator or the Director of Broward County's ERP, who serves as the primary contact responsible for coordination with Contractor. The primary responsibilities of the Contract Administrator are to coordinate and communicate with Contractor and to manage and supervise execution and completion of the Statement of Work and the other terms and conditions of the Agreement. In the administration of the Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator.

1.12 County Attorney means the chief legal counsel for County who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.

1.13 County Business Enterprise or "CBE" is a small business located in Broward County, Florida, which meets the criteria and eligibility requirements of Broward County's CBE Program and must be certified by Broward County's Office of Economic and Small Business Development.

1.14 Custom Software means software that is specifically designed and programmed for County's System and includes the various integrations with other software systems in addition to the Application Software as modified, customized, configured, or integrated to meet County's requirements in addition to Contractor's enhancements embedded in the System.

1.15 Defect(s) mean incorrect implementation or failure to conform to the Documentation or the Acceptance Criteria resulting in inadequacy, malfunction, or imperfection. In the event of a conflict between the Acceptance Criteria and the Documentation, the Acceptance Criteria shall prevail. The term "Defect" expressly excludes any defect arising solely from a defect or malfunction of the Application Software, other than a customization or interface to the Application Software provided by Contractor or a functionality specifically stated in the Specifications.

1.16 Deliverable(s) means all Custom Software and Documentation to be delivered by Contractor and all items of Services to be performed for and provided to County by Contractor under the Agreement as set forth in this Agreement or the applicable Statement(s) of Work.

1.17 Delivery means that the applicable Deliverable shall be deemed to have been provided or taken place as follows:

- a. In case of items to be delivered in tangible form, upon the transfer of possession of the item to the control of the respective County personnel designated to receive such possession at the designated time and place, or, if no place is designated, at such person's regular business office;
- b. In the case of items to be delivered by electronic transmission, upon successful completion of such transmission to the designated County computer and verification by County of the accuracy of such transmission;
- c. In the case of items subject to the completion of an Acceptance Test, upon acceptance of the item by the County;
- d. In all other cases, upon completion of the Services encompassed by such Deliverable in all material respects as set forth in the applicable SOW.

1.18 Documentation means such documentation as provided by Contractor to County of the System relating to the use, function, and Support of the System, as may be amended from time to time by Contractor. Such Documentation shall be provided in hardcopy or softcopy and shall include, but not be limited to, the Statement of Work, the Acceptance Criteria as set forth in this Agreement, and the changes, modifications, alterations, and configurations made by Contractor or its subcontractors to the Software hereunder to provide County the System. For purposes hereof, Documentation also includes the User and/or System Administrators' Guides and other written or electronic material as made generally available by Contractor to its customers relating to the use, function, and Support of the System, as may be amended from time to time by Contractor, by including any derivative works thereto. County may modify, add to, or customize the Documentation for its internal use. County may copy the Documentation as needed for its internal use at no additional fee. The term "Documentation" excludes any materials provided or made available directly by the Application Software provider, whether or not provided to County by Contractor or the Application Software provider.

1.19 Event means an incident whereby the System is either not working or its operation is inconsistent with the Documentation. Events are divided into categories. The categories are Priority 1, 2, 3, or 4 as further defined below.

PRIORITY 1 - CRITICAL BUSINESS IMPACT EVENT means the impact of the reported Defect is such that County is unable to either use the System or reasonably continue work using the System.

PRIORITY 2 - SIGNIFICANT BUSINESS IMPACT EVENT means important features of the System are not working properly. While other areas of the System may not be impacted, the reported Defect has created a significant, negative impact on County's productivity and/or service level.

PRIORITY 3 - SOME BUSINESS IMPACT EVENT means important features of the System are not working properly. County impact is minimal loss of operational functionality.

PRIORITY 4 - MINIMAL BUSINESS IMPACT EVENT means a County clarification or information request which has no operational impact. The implementation or use of the System by County is continuing and there is no negative impact on productivity.

1.20 Final Acceptance means the acceptance of the System by County as required by Section 22.148 of the Broward County Administrative Code which established a requirement for inspection and testing of all computer application software purchased or developed for County by third parties costing over Twenty Thousand Dollars (\$20,000.00).

1.21 Go-Live Date is defined as the date that CCI and County agree in writing that an application or Roll-Out is “production-ready” and is being used in a production status.

1.22 Hardware means the hardware provided and maintained by Contractor to host and operate the Application Software and provide access to the Application Software by County and third-party users over the Internet.

1.23 Lead Endorser means the individual representative of County designated to signoff for a Deliverable as set forth in the applicable SOW.

1.24 Managed Services means any post-production support activity following each Roll-Out, not included as part of the Hosting Services, intended to eliminate faults, to improve or to keep System in satisfactory working condition, including tests, measurements, adjustments, changes, modifications, enhancements or repairs as set out in Exhibit A-3 (Managed Services SOW) of this Agreement.

1.25 Notice to Proceed means written notice delivered by County to Contractor authorizing the Contractor to begin work on a specific phase, Deliverable, or Roll-Out, or to begin providing Services as contemplated under this Agreement

1.26 Project Manager means the person identified by County to serve as the focal point for all Contractor communications, who can make decisions on behalf of County as authorized under this Agreement, and who will be responsible for managing County personnel and any County contractors and suppliers.

1.27 Proposed Acceptance Criteria means the preliminary criteria submitted by CCI, which is subject to approval by County, which would (if approved by County) determine the criteria by which County would accept or reject the particular Deliverable.

1.28 Roll Out means one of three (3) major phases of the Services as identified in the Implementation SOW.

1.29 Services means the work, duties, and obligations to be carried out and performed by Contractor under the Agreement and pursuant to the Statements of Work, attached to the Agreement. Without limiting the foregoing, the Services to be performed by Contractor fall into the following general categories: (i) consulting, (ii) installation of Application Software, (iii) software programming or customization/configuration of the Application Software, (iv) project management, (v) programming agreed upon interfaces, (vi) conversion of County's current data, (vii) training of County staff, (viii) Hosting Services; and (ix) Managed Services. "Implementation Services" shall mean the Services provided pursuant to Exhibit A-1, the Implementation SOW, to this Agreement. "Hosting Services" is defined in the HSS, and includes the Services provided pursuant to Exhibit A-2, the Hosting SOW, to this Agreement. "Managed Services" is defined above, and includes the Services provided pursuant to Exhibit A-3, the Managed Services SOW. Collectively, Implementation Services, Hosting Services, and Managed Services are included in the definition "Services."

1.30 Software means programs which (i) tell a computer what to do, and (ii) are required to perform the tasks specified in the Agreements, whether or not the programs are to be supplied by Contractor or are considered to be the primary application for the System.

1.31 Specifications means Exhibits 1 through 4, inclusive, to the Implementation Statement of Work (Exhibit A-1), and any other written specifications agreed upon by the Parties in writing during the course of the project including without limitation any additional or modified specifications as stated in a fully-executed Work Authorization.

1.32 Stage means smallest feasible groupings of related business processes that are mutually dependent through integration.

1.33 System means Contractor's hosted solution based primarily on the Application Software hosted in Contractor's datacenter, which will provide end-to-end business processes comprised of robust functionality and services to County users as defined in the Specifications, including all Services, Documentation, Application Software, Custom Software, Hardware as defined herein, and other items, tangible and intangible, which together will (i) allow County's ERP Department to have and maintain an automated and integrated ERP System, and (ii) provide the Documentation and Services required by the Agreement inclusive of its Exhibits.

1.34 User means any individuals authorized by County or public access, to the extent available, to use the System, Services, or Application Software, including, but not limited to, County employees, vendors, consultants, temporary workers or others granted access by County.

ARTICLE 2 PURPOSE AND SOLUTION

The Parties understand that the Agreement is the result of County's procurement process and negotiations relating to RLI No. R0866301R2. The comprehensive solution proposed by Contractor and accepted by County is a vendor-hosted, centralized ERP solution encompassing

all departments and offices reporting to the County Administrator that meets the Specifications and includes implementation, hosting, support and maintenance services, pre-project training, application development, change management, training and support, and maintenance. Contractor acknowledges that County's acquisitions made as a part of this Agreement are subject to the Acceptance Criteria described and set forth in the Agreement being met, and that compliance with the Acceptance Criteria including the Specifications is an essential element and condition of this Agreement.

ARTICLE 3 BROWARD COUNTY'S ADMINISTRATIVE CODE REQUIREMENT FOR INSPECTION, TESTING, AND ACCEPTANCE

Broward County Administrative Code, Section 22.148, relating to County's Computer Software Policy, established a requirement for inspection of all computer application software systems purchased or developed for Broward County by others costing over Twenty Thousand Dollars (\$20,000.00) prior to its acceptance by County. Contractor recognizes that all computer application Software purchased or licensed by Broward County from Contractor, and without limiting the foregoing, in particular, the System acquired under the Agreement, shall be inspected and tested by County's Enterprise Technology Services Division ("ETS") prior to acceptance of the System. Also, all contracts for the purchase of computer application software costing more than Twenty Thousand Dollars (\$20,000.00) shall include clauses providing (i) for inspection and testing by the Enterprise Technology Services Division of such computer application Software prior to formal acceptance of that software by Broward County, and (ii) that final payment shall not be made prior to formal acceptance of the System by County. County's Enterprise Technology Services Division will coordinate its acceptance responsibilities with those of other County entities utilizing the standards for acceptance set forth and described in the applicable Statement of Work attached to this Agreement.

ARTICLE 4 SCOPE OF SERVICES

4.1 Contractor shall perform all work identified in this Agreement inclusive of the Statements of Work, Exhibits, and Appendices attached and made a part of this Agreement. The Parties agree that this Agreement, Statements of Work, Exhibits and Appendices describe Contractor's obligations, unless otherwise expressly provided, and are deemed to include preliminary considerations and prerequisites, labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable.

4.2 Hosting Services provided by Contractor for the Hosting Term shall be subject to the additional terms set forth in the HSS, in addition to the terms stated herein. In the event of any inconsistency, the terms of the HSS shall govern solely as to the Hosting Services.

4.3 For a period of three (3) years from the Final Acceptance of the System by County, Contractor agrees to provide consulting and programming services as requested by County for customization and/or enhancements to the System. County shall pay Contractor for the

services, object code related to any programming, and documentation related to the development work at the rate for the service categories as set forth and described in Exhibit B, the Payment Schedules. Where the programming to be provided by Contractor is for Custom Software, Contractor will also provide the source Code for such programming.

ARTICLE 5 COMPENSATION OF AND METHOD OF PAYMENT

5.1 For the Initial Term, County will pay Contractor up to a maximum amount as follows:

| Services or Other Deliverables | Term | Not-To-Exceed Amount |
|---|-----------------------------------|-----------------------------|
| Implementation Services | Implementation Term | \$31,100,000.00 |
| Hosting Services | Hosting Term | \$5,500,000.00 |
| Managed Services | Managed Services Term | \$4,200,000.00 |
| Bond Charges | Agreement Term | \$750,000.00 |
| Pre-Project Training | Agreement Term | \$502,000.00 |
| INITIAL 5-YEAR TERM TOTAL | | \$42,052,000.00 |
| Hosting Services Renewal Terms | Three (3) five-year renewal terms | \$31,000,000.00 |
| Managed Services Renewal Terms | Three (3) five-year renewal terms | \$2,000,000.00 |
| RENEWAL TERMS TOTALS | | \$33,000,000.00 |
| Optional Services for Implementation Services | Agreement Term | \$3,100,000.00 |
| Optional Services for Hosting Services | Agreement Term | \$250,000.00 |
| OPTIONAL SERVICES TOTAL | | \$3,350,000.00 |
| TOTAL NOT TO EXCEED | | \$78,402,000.00 |

5.1.1 Payment shall be made only for work actually provided in accordance with the terms of this Agreement and shall be made in accordance with the applicable Payment Schedule, which payment shall be accepted by Contractor as full compensation for all services. Contractor acknowledges that the amounts set forth herein are the maximum amounts payable for the respective terms and constitute a limitation upon County's obligation to compensate Contractor for its services under this Agreement. These maximum amounts, however, do not constitute a limitation of any sort upon Contractor's obligation to perform under this Agreement. Unless otherwise expressly stated in this Agreement, Contractor shall not be reimbursed for any expenses it incurs under this Agreement.

5.1.2 Payments shall be made for certain Deliverables preliminary accepted in connection with the Implementation Services as set forth in the Implementation SOW and the Implementation Payment Schedule. Upon preliminary acceptance of a Deliverable for which payment is indicated in the Implementation Payment Schedule, County shall pay Contractor Eighty-Five Percent (85%) of the total shown to be due on the invoice for the applicable

Deliverable as detailed in the Implementation SOW and Payment Schedule. The remaining fifteen percent (15%) due for that Deliverable shall constitute retainage ("Retainage"). Upon Final Acceptance by County of the applicable Roll-Out, Contractor may invoice County for one-half (1/2) of the Retainage held for that Roll-Out (equal to 7.5% of the total amount for the Roll-Out) ("Roll-Out Retainage"), which County shall pay to Contractor in accordance with this Article 5. The remaining unpaid Retainage for each Roll-Out (equal to 7.5% of the total amount for the Roll-Out) ("System Retainage") shall be invoiced by Contractor and paid by County after Final Acceptance of the System, pursuant to Article 3 and Article 12 herein. There shall be no Retainage applicable to any Base Monthly Payments, Hosting Services fees, Managed Services fees, Pre-Project Training Fees, or Bond reimbursement.

5.2 METHOD OF BILLING AND PAYMENT

5.2.1 Invoices. Contractor may submit invoices only in accordance with the Payment Schedules set forth in Exhibit B and as follows:

(a) Unless otherwise stated herein or in the applicable Payment Schedule, an electronic invoice must be submitted within fifteen (15) days after the end of the month for which Services were rendered, except that the final invoice must be submitted no later than sixty (60) days after all applicable Services are completed.

(b) For Implementation Services, Contractor shall not submit any invoice for payment until County has agreed to preliminary acceptance of the particular Deliverable(s). Contractor agrees that all Deliverables and Roll-Outs that are part of the System shall be inspected and tested by County as a whole as set forth herein and payment per the Payment Schedules shall not be made until County has accepted the Deliverables or provided Final Acceptance of the Roll-Out or System as set forth in the Implementation SOW, as well as Articles 3 and 12 herein.

(c) For Hosting Services, Contractor shall submit a draft invoice to County by the first (1st) day of each calendar month for which payment is sought ("Current Month Hosted"), which draft invoice shall reflect any Service Credits or other credits due for months prior to the Current Month Hosted. Contractor shall also provide, upon request, documentation as may be reasonably requested by County to substantiate the calculation of the Service Credits. County shall review and provide Contractor with any requested modifications to the draft invoice on or before the fourteenth (14th) day of the month at issue. Contractor may invoice County for the Current Month Hosted on or after the fifteen (15th) day of the Current Month Hosted.

(d) For Base Monthly Payments as stated in the Implementation Payment Schedule, the Base Monthly Payment shall be invoiced monthly in arrears. Base Monthly Payments will begin to accrue with the issuance of the County's Notice to Proceed as to Implementation Services, and conclude at the end of the Post Go-Live Support Period for the final Roll-Out, unless otherwise agree in writing by the Parties.

5.2.2 County shall pay Contractor within thirty (30) days of receipt of Contractor's proper invoice, as required by the "Broward County Prompt Payment Ordinance" (Broward County Ordinance No. 89-49). To be deemed proper, an invoice must comply with all requirements set forth in this Agreement and must be submitted on the form provided by Contractor and approved by County. County shall have the right to withhold payment of the invoice based on Contractor's failure to comply with any term, condition, or requirement of this Agreement until submission of a corrected invoice. The Parties hereto agree that any amounts so withheld shall not be subject to payment of any interest by County.

5.3 Change Control Procedures. Contractor acknowledges that Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the scope of services to be provided under this Agreement except as expressly provided herein.

5.3.1 The Parties acknowledge that the Statements of Work (Exhibit A) may not delineate every detail and minor work task required to be performed by Contractor to complete its Services and provide the Deliverables and the System. Contractor has reviewed and is familiar with information provided to Contractor by County concerning County's current financial, accounting and management systems and operations, and Contractor confirms and represents that, based upon the information provided by County as of the Effective Date of this MSA and, to the best of the Contractor's knowledge, the scope of work stated in the Statements of Work, as agreed between the parties, includes all work required to achieve the functionality and capabilities set forth in this Agreement inclusive of its Exhibits. Neither party is aware of any additional work required to achieve that functionality. If, during the course of the performance of the Services, Contractor determines that work should be performed to complete the System which, in Contractor's opinion, is outside the level of effort originally anticipated in Exhibit A, whether or not Exhibit A identifies the work items, Contractor shall notify the Contract Administrator in writing in a timely manner. If Contractor proceeds with said work without notifying the Contract Administrator, said work shall be deemed to be within the original level of effort of Exhibit A, whether or not specifically addressed in Exhibit A. The provision of prior written notice to the Contract Administrator by Contractor does not constitute authorization or approval by County to perform the work. Performance of work by Contractor outside the originally anticipated level of effort without prior written County's Contract Administrator approval is at Contractor's sole risk and at no cost to County.

5.3.2 County or Contractor may also request changes that would increase, decrease, or otherwise modify Exhibit A. Any material changes to scope or any changes that would increase the total compensation due to Contractor must be made in accordance with the provisions of the Broward County Procurement Code and must be contained in a written amendment executed by the Parties hereto prior to any deviation from the terms of this Agreement including the initiation of any additional services. County shall compensate Contractor for such additional services as provided in Article 5 herein.

5.3.3 To the extent any goods or services under this Agreement, or the quantity thereof, are optional ("Optional Services"), County, through its Purchasing Director or the Contract Administrator, may select the type, amount, and timing of such goods or services pursuant to a Work Authorization (with an accompanying Statement of Work, if applicable) executed by the Contractor and the Purchasing Director or Contract Administrator, provided that no such selection, when combined with those goods or services required under the Agreement, would result in a payment obligation exceeding the applicable not-to-exceed 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 the County as follows: the Contract Administrator may execute any Work Authorization for which the total cost to County is less than \$30,000.00; the Purchasing Director may execute any Work Authorization for which the total cost to the County is within the Purchasing Director's delegated authority; any Work Authorizations above the County's Purchasing Director delegated authority shall require Board approval. Subsequent to the full execution 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 the applicable Notice to Proceed.

5.3.4 In the event a dispute between the Contract Administrator and Contractor arises over whether requested services constitute additional work or services or are outside the level of effort originally anticipated in Exhibit A and such dispute cannot be resolved by the Contract Administrator and Contractor, such dispute shall be subject to the dispute resolution procedures set forth in Article 13 of this Agreement. During the pendency of any dispute, if requested in writing by the Contract Administrator, Contractor shall perform the disputed services for up to sixty (60) days. Contractor shall promptly provide County with a quotation of any additional charges Contractor contends are due for the disputed services. In the event that Contractor estimates the disputed services would incur additional charges of more than \$100,000, the parties shall immediately commence mediation pursuant to Article 13 of this Agreement which must be concluded within the sixty (60) day period. In no event shall Contractor discontinue any undisputed services as a result of a dispute as to any unrelated disputed services.

5.3.5 County's Purchasing Director or any individual authorized to act in such capacity shall have the authority to approve, award and execute all documents or other instruments required to effectuate changes, modifications or additional service contemplated by Article 5 herein above, so long as the then cumulative financial obligation of County for such additional items does not exceed the Purchasing Director's authority under the Procurement Code. Any change, modification or additional service that causes the cumulative financial obligation of County for such additional items to exceed the Purchasing Director's authority under the Procurement Code shall be presented to the Board for its approval.

5.4 Travel. With respect to travel costs and travel-related expenses, Contractor agrees to adhere to Section 112.061, Florida Statutes, except to the extent, if any, that the applicable Payment Schedule (Exhibit B) expressly provides to the contrary. County shall not be liable for

any such expenses that have not been approved in advance, in writing, by County's Contract Administrator.

5.5 Fixed Pricing. Prices shall remain firm and fixed for the initial five-year term of the Agreement. However, Contractor may offer incentive or volume discounts to County at any time.

5.6 Taxes. All fees charged by Contractor are exclusive of all taxes. It is understood that County is a tax-exempt entity in the State of Florida, and County shall be responsible for the payment of applicable taxes relating to Contractor's provision of the Services, if any, if and when it loses tax-exempt status. County agrees to provide Contractor with written proof of its tax-exempt status, if requested by Contractor.

5.7 Other Costs. Except where expressly provided otherwise in this Agreement or any of its Exhibits, the amounts set forth in this Agreement per the Payment Schedules include any and all of Contractor's overhead, operating costs, outlays, profit, and other associated out-of-pocket costs including, but not limited to, photocopying, long distance telephone, special mailings and the like. Except where expressly provided otherwise in this Agreement or any of its Exhibits, Contractor shall also bear all of its own expenses arising from its performance of the obligations under this Agreement and the Statement of Work including (without limitation) expenses for facilities, work spaces, utilities, management, clerical and reproduction services, supplies, and the like. In addition, County shall have no liability whatsoever and Contractor shall bear any and all additional costs, expenses or taxes arising from or relating to a determination of the state(s) of domicile or compensatory tax for temporary living reimbursements for any of Contractor's employees, independent contractors, or vendors providing any work or service under this Agreement.

5.8 Payment. Any payment to Contractor shall be payable to "CedarCrestone, Inc." at 1255 Alderman Drive, Alpharetta, GA 30005.

ARTICLE 6 TERM OF AGREEMENT AND NOTICE TO PROCEED

6.1 Term of Agreement. The term of this Agreement shall begin on the date it is fully executed by both parties (the "Effective Date") and shall end after the expiration or termination of the last to conclude of the Implementation Services Term, the Hosting Services Term, or the Managed Services Term (collectively, the "Agreement Term"), subject to earlier termination as provided in Article 10.

(A) Implementation Services Term. The term of the Implementation Services provided by Contractor pursuant to this Agreement shall begin on issuance of a Notice to Proceed by the County for the Implementation Services and shall extend until the conclusion of the final Post Go-Live Support period (as defined in Exhibit A-1) ("Implementation Term").

(B) Hosting Services Term. The term of the Hosting Services provided by Contractor pursuant to the Hosting SOW (Exhibit A-2) and the terms of the HSS (Exhibit G) shall begin on the issuance of a Notice to Proceed by the County for the Hosting Services and shall extend for five (5) years ("Hosting Term"), subject to three (3) five-year renewals thereafter upon written notice by the County's Purchasing Director, subject to earlier termination as provided in Article 10.

(C) Managed Services Term. The term of the Managed Services provided by Contractor pursuant to the Managed Services SOW (Exhibit A-3) shall begin upon issuance of a Notice to Proceed by County for the Managed Services and shall extend for five (5) years ("Managed Services Term"), subject to five (5) year renewals thereafter upon written notice by the County's Purchasing Director, subject to earlier termination as provided in Article 10.

6.2 Fiscal Year. In the event this Agreement extends beyond a single fiscal year of County, the continuation of this Agreement beyond any such fiscal year shall be subject to the availability of County funds in accordance with Chapter 129, Florida Statutes, as amended. County represents that its fiscal year currently commences on October 1 of each year and ends on September 30 of each year.

6.3 Notice to Proceed. Prior to beginning the performance of any Services, Contractor must first receive a written Notice to Proceed from the Contract Administrator. Prior to the execution of this Agreement, Contractor shall provide County with a properly completed Insurance Certificate, the completion and submittal of which is considered a condition precedent to County's execution of this Agreement.

6.4 Completion of System Timetable. Contractor and County anticipate that Contractor shall complete the System, through Final Acceptance, within fifty-one (51) months from the date of the issuance of the Notice to Proceed. The parties acknowledge that the project may be affected by various factors that may extend the duration of the project beyond fifty-one (51) months. However, if Contractor is unable to complete the System, including Final Acceptance, within sixty-five (65) months from date of the issuance of the first Notice to Proceed, County shall have the option to terminate the Agreement in whole or in part by written notice from its Contract Administrator. The Contract Administrator shall have the option to extend in writing the completion time period for good cause shown.

6.5 Excused Performance. Contractor's nonperformance of its obligations as to any specific Deliverable or other obligation under this Agreement shall be excused if and to the extent such nonperformance is due to: (a) County's failure to perform its responsibilities as set forth in this Agreement, provided that Contractor provides County written notice of such nonperformance as soon as practicable after Contractor becomes aware of such nonperformance and uses commercially reasonable efforts which do not involve additional costs to Contractor to perform notwithstanding County's failure to perform; (b) the acts or omissions of County or its agents, entities or any third party authorized to act on its behalf which hinder or delay Contractor's ability to perform its obligations under this Agreement; (c) County's failure to perform any

activity or performance an action required under this Agreement (other than an action required of Contractor) which hinders or delays Contractor's ability to perform its obligations under this Agreement; or (d) force majeure or unanticipated substantive changes to applicable laws and regulations that interrupt, delay or fundamentally alter the scope of the engagement.

ARTICLE 7 INDEMNIFICATION AND LIMITATION OF LIABILITY

7.1 Indemnification by Contractor. Contractor shall at all times hereafter indemnify, hold harmless, and defend County, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures, including attorneys' fees, court costs, and expenses, brought by third parties that are caused or alleged to be caused by the intentional or negligent act of, or omission of, Contractor, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement, only to the extent such claims, losses, liabilities, expenditures, demands or causes of action arise from personal injuries, damages to tangible property, breach of confidentiality obligations under this Agreement, violation of intellectual property rights, or claims by Contractor's employees, affiliates, vendors, or subcontractors. In the event any lawsuit or other proceeding is brought against County by reason of any such claim, cause of action or demand, Contractor shall, upon written notice from County, resist and defend such lawsuit or proceeding by counsel satisfactory to County. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent reasonably considered necessary by the Contract Administrator and the County Attorney, any sums due Contractor under this Agreement may be retained by County until all of County's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by County.

7.2 Limitation of Liability. For claims arising from the Effective Date of this Agreement through the date of the County's Final Acceptance of the Implementation Services, Contractor's liability for direct damages shall not exceed the greater of (i) \$2,000,000 or (ii) 1.5 times the fees paid by the County under the Implementation SOW, not to exceed the total contract value. For claims arising after Final Acceptance, Contractor's liability for direct damages shall not exceed the lesser of: (i) \$3,000,000; or (ii) the largest amount actually paid to Contractor by County in any consecutive twenty-four (24) month period for Hosting Services. These limitations of liability shall not apply to (i) any claim resulting from Contractor's actual or alleged disclosure of County Confidential Information, (ii) any Claim resulting from an actual or alleged infringement of any interest in any CCI Technology or other intellectual property, or (iii) any indemnification obligation under this Agreement. EXPRESSLY EXCLUDING ANY DAMAGES IN CONNECTION WITH FALSE CLAIMS ACTIONS AGAINST CONTRACTOR, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES OF COUNTY.

ARTICLE 8 INSURANCE

8.1 Contractor shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverages set forth in Sections 8.3, 8.4, 8.5, and 8.6, in accordance with the terms and conditions required by this Article.

8.2 Such policy or policies shall be without any deductible amount unless otherwise noted in this Agreement and shall be issued by approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in Broward County, Florida. Contractor shall pay all deductible amounts, if any. Contractor shall specifically protect County and the Broward County Board of County Commissioners by naming "Broward County" as an additional insured under the Commercial Liability Policy as well as on any Excess Liability Policy coverage. The official title of the certificate holder is Broward County. This official title shall be used in all insurance documentation.

8.3 Professional Liability Insurance. A Professional Liability Insurance Policy shall be provided which shall contain minimum limits of Ten Million Dollars (\$10,000,000) for each claim and in the aggregate, and shall remain in force for two (2) years after the completion of all Services under the Agreement. Any deductible or retention amount shall not exceed Five Hundred Thousand Dollars (\$500,000.00) for each occurrence. Contractor shall notify County in writing within thirty (30) days of any claim filed or made against its Professional Liability Insurance Policy.

8.4 Commercial General Liability Insurance. A Commercial General Liability Insurance Policy shall be provided which shall contain minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury liability and property damage liability and shall contain minimum limits of Two Million Dollars (\$2,000,000) per aggregate. Any deductible amount shall not exceed One Thousand Dollars (\$1,000.00) for each occurrence. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

- Premises and/or operations.
- Independent contractors.
- Products and/or Completed Operations for contracts.
- Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement.
- Personal Injury Coverage, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

8.5 Business Automobile Liability. Business Automobile Liability shall be provided with minimum limits of Five Hundred Thousand Dollars (\$500,000) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Any deductible amount shall not exceed One Thousand Dollars (\$1,000.00) for each occurrence. Coverage must be afforded on

a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

- Owned Vehicles
- Hired and Non-Owned Vehicles
- Employers' Non-Ownership
- Any Auto

8.6 Workers' Compensation Insurance. Workers' Compensation insurance to apply for all employees in compliance with Chapter 440, Florida Statutes, as amended, the "Workers' Compensation Law" of the State of Florida, and all applicable federal laws. In addition, the policy(ies) must include:

- Employers' Liability with a limit of Five Hundred Thousand Dollars (\$500,000) each accident.
- If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.

8.7 Contractor shall furnish to County's Contract Administrator Certificate of Insurance or endorsements evidencing the insurance coverage specified by this Article within fifteen (15) calendar days after complete execution of the Agreement. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Agreement, and state that such insurance is as required by this Agreement. The Certificate of Insurance shall be in form similar to and contain the information set forth in Form 00708, to be provided by County's Risk Management Division. Contractor's failure to provide to County the Certificates of Insurance or endorsements evidencing the insurance coverage within fifteen (15) calendar days shall provide the basis for the termination of the Agreement.

8.8 Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of Contractor is completed. All policies must be endorsed to provide County with at least thirty (30) days' notice of expiration or cancellation. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal certificates shall be furnished within ten (10) days of the renewal.

8.9 County reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements based on insurance market conditions affecting the availability or affordability of coverage, or changes in the scope of work or specifications that affect the applicability of coverage. If Contractor uses a subcontractor, Contractor shall ensure that subcontractor names "Broward County" as an additional insured.

ARTICLE 9 TRANSITION AND DISENTANGLEMENT

9.1 Disentanglement. 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 System and/or Services and, to the extent applicable, transitioning to a new software, system, or provider. Any additional services (other than as stated in the applicable Statement(s) of Work) provided by Contractor for Disentanglement shall be invoiced to County at the applicable hourly rates set forth in the applicable Payment Schedule, and shall be agreed to in writing by the Parties through a Work Authorization and applicable Statement of Work.

9.2 Transitional Period Services. If County elects not to renew this Agreement for any Services after the applicable Initial Term or any subsequent renewal term, and provided County is not in breach of the Agreement, County may extend access to the applicable Services on a month-to-month basis for a period not to exceed six (6) months from the date of expiration of the applicable term ("Transitional Period Services"). The rates for the Transitional Period Services shall be at Contractor's then current fees schedule in effect at the time of expiration of the prior term. County shall give Contractor no less than ninety (90) days prior written notice before the expiration of the then-current term of its desire to extend access under this section, and shall provide thirty (30) days prior written notice of election to cancel Transitional Period Services after Transitional Period Services begin. Upon expiration of the six (6) month maximum period for Transitional Period Services, Contractor shall terminate the services and no further extension shall be given without prior written approval of Contractor. In addition, in the event Contractor terminates this Agreement for cause other than non-payment, Contractor shall extend such Transitional Period Services as provided herein to the extent requested by County, and during such Transitional Period Services, Contractor shall cooperate with County in its attempts at transferring to another hosting site or Services provider.

ARTICLE 10 TERMINATION

10.1 Termination by County.

10.1.1 Termination for Cause. This Agreement may be terminated for cause by the County if the Contractor has not corrected a material breach of this Agreement by Contractor within thirty (30) days after written notice from County identifying the breach.

10.1.2 Termination for Convenience. Subject to the provisions of this Section 10.1.2, this Agreement may also be terminated as to the Agreement as a whole or as to any particular Statement(s) of Work for convenience by the Board or the County Administrator. Termination for convenience by the Board or the County Administrator 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 or safety. The parties agree that if County erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

(a) In the event this Agreement is terminated for convenience by County, Contractor shall be paid for any services performed in accordance with the terms of this Agreement (or for the applicable Statement of Work, in the event termination is applicable to less than to all of the Statements of Work) through the termination date specified in the written notice of termination. Contractor acknowledges and agrees that it has received good, valuable and sufficient consideration from County, the receipt and adequacy of which are hereby acknowledged by Contractor, for County's right to terminate this Agreement for convenience.

(b) The County may terminate the Agreement for convenience as to any or all Statements of Work with no further obligation by the County for fees (apart from Services rendered in accordance with the terms of the Agreement) if, in any fiscal year, funding, for any reason, is not provided for the Services and Deliverables including, but not limited to, Implementation Services, Managed Services, or Hosting Services, or other monetary or funding obligations herein. Any termination under this subsection may be exercised by County in writing through its Purchasing Director without penalty or further payment to Contractor.

(c) County acknowledges that the pricing contained herein is dependent and based upon the initial Hosting Term, requiring commensurate investments by Contractor in facilities, technology equipment and personnel. Therefore, if County terminates Hosting Services for convenience prior to the expiration of the initial Hosting Term, County shall pay to Contractor the termination fee ("Termination Fee") as defined and calculated in Section 10.3 based upon the effective date of termination stated in the notice of termination for convenience.

10.1.3 Grounds For Termination for Cause. This Agreement may be terminated for cause by County for reasons including, but not limited to, Contractor's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work in accordance with the Statements of Work including the Specifications, failure of the Contractor to timely perform Services in accordance within the time periods allowed by the project schedule, or failure of Contractor to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. The Agreement may also be terminated for cause if the Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, as amended or if the Contractor provides a false certification submitted pursuant to Section 287.135, Florida Statutes, as amended.

This Agreement may also be terminated for cause by County:

- (a) Upon the disqualification of Contractor as a CBE by County's Director of Office of Economic and Small Business Development if Contractor's status as a CBE was a factor in the award of this Agreement and such status was misrepresented by Contractor;
- (b) Upon the disqualification of Contractor by County's Director of Office of Economic and Small Business Development due to fraud, misrepresentation, or material misstatement by Contractor in the course of obtaining this Agreement or attempting to meet the CBE contractual obligations;
- (c) Upon the disqualification of one or more of Contractor's CBE participants by County's Director of the Office of Economic and Small Business Development 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 or such participant;
- (d) Upon the disqualification of one or more of Contractor's CBE participants by County's Director of the Office of Economic and Small Business Development if such CBE participant attempted to meet its CBE contractual obligations through fraud, misrepresentation, or material misstatement; or
- (e) If Contractor is determined by County's Director of the Office of Economic and Small Business Development to have been knowingly involved in any fraud, misrepresentation, or material misstatement concerning the CBE status of its disqualified CBE participant.

10.2 Termination by Contractor. This Agreement may be terminated for cause by Contractor as to any applicable Statement of Work in the event County breaches any material provision of this Agreement applicable to that Statement of Work, which breach is not substantially cured by County within ninety (90) days after Contractor provides notice of material breach as to the Implementation Services and/or Managed Services, and one hundred eighty (180) days after such notice of material breach by Contractor as to the Hosting Services.

10.2.1 The effect of any termination for cause by Contractor shall apply only to the Statement of Work, Services, and respective term giving rise to the notice of material breach. Unless independently subject to a material breach, any other Statement of Work and the respective term and Services shall not be terminated in the event of such termination for cause. For example, a termination for cause by Contractor under the Implementation Services or Implementation SOW shall not terminate the Hosting Services or Hosting SOW, absent an independent material breach of the Hosting Services or Hosting SOW.

10.2.2 A termination for cause of the Hosting Services by Contractor in accordance with the terms of this Agreement shall obligate County to pay the Termination Fee as set forth in Section 10.3, calculated based upon the effective date of termination for cause.

10.2.3 Contractor may also suspend any affected Implementation Services under this Agreement in the event County fails to pay any invoices in the aggregate amount of more than Four Million Dollars (\$4,000,000) for Implementation Services for a period of more than sixty (60) days after payment is due; any Services so suspended shall be immediately re-commenced upon payment of all undisputed outstanding invoices, provided that alternative dispute resolution procedures have been initiated as to any disputed invoices or the parties otherwise agree in writing. Nothing herein shall preclude Contractor from exercising all rights and remedies as set forth in the HSS at Sections 6.2 (Required ASLMA), 6.3 (ASLMA In Effect), or 8.1 (Warranty by County).

10.3 Termination Fee. To the extent a Termination Fee is due to Contractor upon the terms of this Article 10, it shall be calculated as follows:

| Effective Date of Termination | Termination Fee |
|---|--|
| Months 1 – 12 of the initial Hosting Term (Year 1 Term) | 20% of the Monthly Base Hosting Fee for the remaining months of the initial Hosting Term |
| Months 13-24 of the Initial Hosting Term (Year 2 Term) | 15% of the Monthly Base Hosting Fee for the remaining months of the initial Hosting Term |
| Months 25-36 of the initial Hosting Term (Year 3 Term) | 10% of the Monthly Base Hosting Fee for the remaining months of the initial Hosting Term |
| Months 37-48 of the initial Hosting Term (Year 4 Term) | 5% of the Monthly Base Hosting Fee for the remaining months of the initial Hosting Term |
| Month 48 – 60 (Year 5 Term) | No fee due |
| Any time after Month 60 | No fee due |

The County acknowledges that the Termination Fee is calculated on the initial Hosting Services term, pricing and architecture set forth in this Agreement. The parties agree that the damages caused by breach or early termination of Hosting Services are difficult or impossible to accurately calculate, and that the parties intend the Termination Fee to constitute liquidated damages to provide for damages rather than a penalty, and that the stipulated sums are a reasonable estimate of the probable loss. The Termination Fee calculated pursuant to this Section 10.3 shall be in addition to any amounts owed for Hosting Services provided to County before the date of termination or breach.

10.4 Notice of termination shall be provided in accordance with the “NOTICES” section of this Agreement except that notice of termination by the County Administrator, which the County Administrator deems necessary to protect the public health, safety, or welfare, may be verbal notice that shall be promptly confirmed in writing in accordance with the “NOTICES” section of this Agreement.

10.5 In the event this Agreement is terminated for any reason other than a termination for cause by Contractor, a termination for convenience by the County, or a termination by the County pursuant to Section 6.2 of this Agreement, any amounts due Contractor shall be

withheld by County until all documents are provided to County pursuant to the “Rights in Documents and Works” provisions in Section 16.37 of this Agreement.

10.6 Obligations Upon Termination. Unless otherwise set forth in this Agreement, upon termination or expiration of the Hosting Services for any reason, the following shall occur:

- (a) Any undisputed amounts owed to Contractor for Hosting Services provided in accordance with this Agreement through the date of termination or expiration will be immediately due and payable;
- (b) All licenses and rights to the Hosting Services granted under the HSS or the Hosting SOW, if any, shall terminate;
- (c) Contractor will immediately cease performing all Hosting Services and all County and User access to the Hosting Services shall be immediately terminated;
- (d) Contractor will discontinue all use of the County Information unless otherwise required under the Implementation Services or Managed Services. Except for encrypted tape back-ups archived offsite in accordance with Contractor’s data archival practice, upon County request, Contractor shall provide written confirmation of the destruction of all copies of County Information and shall include an inventory list of all destroyed back-up tapes or similar devices. Event and Audit Data and Blind Data may be kept past the termination date for auditing purposes. Upon request by County, Contractor shall provide or cause to be provided County a file copy of all County Information (not including Software) in the then-currently-hosted format in an “as is and with all faults” condition; and
- (e) Notwithstanding anything stated in (a) through (d) above, the Parties shall strictly comply with the transition and disentanglement provisions as set forth in the Hosting SOW.

ARTICLE 11 CONFIDENTIAL INFORMATION

11.1 Contractor represents that it has information and documents confidential and exempted from disclosures under Florida’s laws, including without limitation Sections 119.071(1)(c), 119.071(1)(f), 119.071(5)(b), and 815.045, Florida Statutes. County represents that it has information and documents confidential and exempted from disclosures under Florida’s public records laws, including without limitation, Sections 119.071(1), (4) and (5), Section 119.0713, Florida Statutes.

11.3 Subject to applicable Florida and federal laws, both Parties hereby acknowledge that each Party may be exposed to confidential and proprietary information of the other Party and providers of software and confidential and proprietary information, business information, and information that may be exempted from disclosure or prevented from being disclosed by

reason of law. “Confidential Information” must be expressly identified in writing by the Party claiming such confidentiality (prior to allowing access by the other Party if so required by applicable laws), and such Party must provide the other Party with a written statement of the nature of such claim. Confidential Information does not include the following:

11.3.1 information already known or independently developed by Contractor or County;

11.3.2 information in the public domain through no wrongful act of Contractor or County;

11.3.3 information received by Contractor or County from a third Party who was free to disclose it, or

11.3.4 information required to be disclosed by law or an order of court.

11.4 Subject to applicable Florida and federal laws, with respect to the Confidential Information, both Parties hereby agree that during the term of this Agreement and at all times thereafter, neither shall use, commercialize, or disclose such Confidential Information obtained from the other to any person or entity, except to such other Parties as the Party’s representative (such as Contract Administrator for County) claiming confidentiality may approve in writing and under such conditions as such claiming Party may impose in advance in writing unless otherwise required by law or court order. County, as a political subdivision of the State of Florida, 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.

11.5 Both Parties agree that the provisions in this Article 11 are subject to court orders, administrative orders, and applicable Florida and federal laws, as amended from time to time. In addition to any protections afforded to Contractor by the federal copyright and patent laws, Contractor also represents to County for its reliance thereupon that its software and confidential proprietary software material documentation are also trade secrets under Florida laws, including Section 812.081, Florida Statutes. Contractor shall be solely responsible for ensuring that all copies of its confidential proprietary and trade secret materials are properly marked with appropriate written and/or electronic notice(s) identifying same as confidential, proprietary and/or trade secret as appropriate prior to providing to County.

11.6 County Confidential Information.

11.6.1 All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods that Contractor obtains from County in connection with the Hosting Services, that are made or developed by Contractor

for the County's exclusive use in the course of the performance of this Agreement, or in which County holds proprietary rights, constitute "County Confidential Information."

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

11.6.3 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.

11.6.4 To the full extent demanded by County, Contractor shall immediately turn over to County all County Confidential Information, in any form, tangible or intangible, possessed at the time of demand by Contractor or its employees, agents, subconsultants or Suppliers.

11.6.5 Notwithstanding the foregoing, Contractor retains the right to use and collect Blind Data to the extent set forth in Section 10.2 of the HSS.

11.7 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 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 the other Party's 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.

11.8 Contractor Confidential Information. The Parties acknowledge and agree that in the course of performing under this Agreement, Contractor will disclose to County certain trade secrets and other proprietary information identified as "Contractor Confidential Information" and subject to exemption from production under Florida Public Records laws. County agrees not to disclose such Contractor Confidential Information to any third party and to treat it with the same degree of care as it would its own confidential information, unless otherwise required by applicable law. County further agrees not to disclose Contractor Confidential Information to any employees other than those with a need to have access to it and to instruct those employees on the need to maintain the confidentiality of the Confidential Information.

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

Notwithstanding the foregoing, the Party receiving Confidential Information shall not be in violation of this Section with regard to a disclosure that is required under applicable law or was otherwise in response to an order by a court or other governmental body, provided that the receiving Party uses reasonable efforts to provide the other Party with prior written notice of such disclosure and permits the other Party to seek confidential treatment of such information. In addition, this provision shall not apply to information already in the possession of or rightfully known by the recipient, information that is or becomes generally known to the public or information rightfully disclosed by a third party not under a duty of confidentiality.

11.20 Survival. The obligations under this Article 11 shall survive the termination of this Agreement or portion thereof or of any right granted under this Agreement.

ARTICLE 12 TESTING/ACCEPTANCE OF THE DELIVERABLES AND SYSTEM

12.1 There shall be a testing or acceptance period during which the System can be used by County, as well as to each separately identified Deliverable, Roll-Out and System as set forth in the applicable Statement of Work (as well as to any subsequent Work Authorization and attached Statement of Work) ("Deliverables"). The purpose of the testing period is to permit County, including County's ETS as described in Article 3, to determine whether a Deliverable has been properly provided or installed so that it, to the extent applicable:

12.1.1 Properly functions in accordance with the applicable acceptance criteria as stated in the applicable Statement of Work and Specifications (collectively, "Acceptance Criteria") and provides the capabilities described therein.

12.1.2 Properly functions together with the operating software, if any, and other items as described in the Documentation so as to provide the functions described in the Documentation;

12.1.3 Properly functions in accordance with the Documentation and provides the capabilities described therein, and

12.1.4 Properly functions as a part of the Hardware configurations as agreed upon by and between Contractor and County's ETS.

12.2 Proposed Criteria. Contractor shall deliver to County Proposed Acceptance Criteria for each Deliverable. Within ten (10) days of receipt of the Proposed Acceptance Criteria, County shall evaluate the Proposed Acceptance Criteria and shall either (1) approve such Proposed Acceptance Criteria, or (ii) provide to Contractor any revisions in the Proposed Acceptance Criteria. If the County fails to approve or revise the Proposed Acceptance Criteria within the ten (10) day period, the County will be deemed to have approved the Proposed Acceptance Criteria. The Proposed Acceptance Criteria, either as approved or revised as directed by County, and as agreed by the Parties, shall constitute the Acceptance Criteria for the applicable Deliverable. If Contractor objects to any revisions proposed by County to the Proposed

Acceptance Criteria or the Parties are unable to agree upon the final Acceptance Criteria, the matter will be subject to the dispute resolution process outline in Article 13 of this Agreement.

12.3 Deliverable Review Schedule. At the start of the Roll-Out, CCI will work closely with County and the County's designated representatives to establish an appropriate timeline for the County's review of Deliverables in order to maintain adherence to the overall project schedule. The content and format of each Deliverable will be reviewed and mutually agreed upon by County and Contractor. Before Delivery to County, draft Deliverables will be reviewed by the County's designated representative ("3PA") on a mutually agreed basis and feedback will be provided to Contractor to correct any deficiencies before it is submitted to the County Project Manager. However, unresolved issues between Contractor and the 3PA will not delay submission of the Deliverable to County. One (1) printed and one (1) electronic final draft of the Deliverable will be submitted to County Project Manager. The County's Project Manager shall distribute any required copies to any Lead Endorser.

12.4 Lead Endorser Approval. With respect to Deliverables, County shall designate an individual representative of County to act as Lead Endorser for each such Deliverable. Written approval for a Deliverable by the designated Lead Endorser shall represent the completion of the acceptance process for the applicable Deliverable. County may replace any Lead Endorser at any time upon written notice to Contractor in the County's sole discretion.

12.5 Default Testing Periods. Unless otherwise expressly stated in the applicable Statement of Work or agreed by the Parties in writing, the testing procedures set forth in this Section 12.5 shall apply for all Deliverables.

12.5.1 The period for testing or acceptance of the Deliverables will be for the "Deliverable Review Period" stated in the applicable Statement of Work for each Deliverable (or, if no period is stated, for a period of ten (10) business days unless otherwise agreed by the parties in writing) which period shall commence on the first business day after Contractor informs County in writing that, as to the applicable Deliverable, Contractor has completed the Services required to be performed prior to testing and is ready for the testing to begin. The Deliverable Review Periods for each Implementation Services deliverable are set forth in Exhibit 5 of the Implementation Statement of Work. If County, acting reasonably and in good faith, determines that the Deliverable is materially incomplete (rather than merely containing a Defect), testing will cease, and Contractor shall complete the Deliverable and resubmit for testing and the time periods herein shall be reset to that of a first submission for testing.

12.5.2 During the Deliverable Review Period, County may, at the option of the Contract Administrator, notify Contractor in writing of any error and/or Defect within a reasonable time after it is determined such exists so that Contractor, at its option, can commence making any needed changes, modifications, adjustments, or repairs to the Deliverable or parts thereof. County's Contract Administrator shall notify Contractor in writing of its acceptance or rejection of the Deliverable, or any part thereof, by the end of the Deliverable Review Period. If County rejects the Deliverable, or any part thereof, its Contract Administrator shall specify the reasons

therefore which reasons shall specify the Acceptance Criteria(s) that the Deliverable failed to meet.

12.5.3 Upon receiving the written notice of rejection, Contractor shall have fifteen (15) business days, or as otherwise agreed by Contract Administrator after receipt of notice within which to either (a) modify, repair, adjust or replace the Deliverable or any portion thereof or (b) set forth in writing the reasons the Deliverable or portion thereof meet the Acceptance Criteria specified in County's notice. If the County disagrees with Contractor's reasons that the Deliverable or portion thereof meet the Acceptance Criteria, the County's Chief Information Officer on behalf of County, shall communicate its disagreement in writing to the Contractor within five (5) business days of receipt of the Contractor's notice. In the event the Parties continue to dispute whether the Deliverable or portion thereof complies, the issues shall be subject to the dispute resolution processes set forth in Article 13 of this Agreement. If Contractor modifies, repairs, adjusts, or replaces the Deliverable, or portion thereof, then the testing period shall be re-set and County, including its ETS, shall retest and shall notify Contractor in writing of any rejection in the same manner as specified above. Absent written agreement by the parties to the contrary, no Deliverable shall be re-tested more than twice, for a total of three testing periods.

12.6 In the event that County does not provide its written acceptance or rejection of the System, Deliverable or any part thereof, before expiration of the Deliverable Review Period, County shall be deemed to have accepted such System, Deliverable or portion thereof.

12.7 In the event that Contractor is unable to remedy the reason or reason(s) for County's rejection of the System or a Deliverable, or any part thereof, within the applicable period set forth for completion of the testing, County, including its ETS, shall elect either to accept the System or Deliverable as it then exists or reject the System or Deliverable.

12.7.1 For any Deliverable that the County rejects, Contractor may not invoice County for any portion of that Deliverable, unless otherwise agreed by the parties in writing. No retainage will accrue or be paid at any time for any rejected Deliverable.

12.7.2 If County elects to accept the System or Deliverable as it then exists (partial acceptance), Contractor shall continue to remedy the reason(s) for County's partial acceptance and shall provide County with the complete Deliverable meeting the applicable Acceptance Criteria prior to any payment of Roll-Out Retainage for the applicable Roll-Out, System Retainage, or final payment by County. If Contractor fails to remedy the reason(s) for County's partial acceptance within thirty (30) calendar days after County's written notification of partial acceptance, then Contractor may, upon prior written approval by the Contract Administrator, invoice County for only the agreed-upon value of the accepted portion of the Deliverable as mutually determined and approved in writing by the Contract Administrator and Contractor's President. In the event

the Parties' representatives cannot mutually agree to such a value within forty-five (45) calendar days after Contractor's receipt of County's partial acceptance notification, then either Party may seek judicial resolution of the issue.

12.7.3 If necessary following any partial acceptance or rejection of a Deliverable, Retainage for the remaining Deliverables for the applicable Roll-Out shall be adjusted by written agreement of the parties to ensure the total Roll-Out Retainage for the applicable Roll-Out is 15% of the total of such Roll-Out.

12.8 County shall conduct testing pursuant to the above procedures for acceptance of each Deliverable within each Roll-Out, for Final Acceptance of each Roll-Out, and for Final Acceptance of the System upon conclusion of all applicable Roll-Outs.

12.9 Final Acceptance. Final Acceptance of the System requires use of the System in totality in production operations for a period of sixty (60) calendar days, including use of the Deliverables, Roll-Outs and/or the System previously tested and conditionally or preliminarily accepted in writing by County, including through its ETS Division, as applicable. If after sixty (60) calendar days the System performs without Defects and meets all applicable Acceptance Criteria, the Contract Administrator and the Contractor will both issue and execute a written Final Acceptance of the System. The 60-day time frame for Final Acceptance will stop if Defects are found during production use and prevent further production use of the System. The Final Acceptance process will restart on the date the Defect is confirmed in writing by Contractor as fixed and will continue for a full 60-day time frame.

12.10 Prior to commencement of any Deliverable or Roll-Out, County shall issue a Notice to Proceed for the applicable Deliverable or Roll-Out. No Services shall be provided by Contractor for any Deliverable or Roll-Out until the applicable Notice to Proceed has been issued by the Contract Administrator.

ARTICLE 13 RESOLUTION OF DISPUTES

13.1 Dispute Resolution. Except for actions for injunctive relief, the Parties will attempt to resolve any disputes that arise out of or in connection with this Agreement through good faith negotiation. If a dispute arises, the parties shall use the following escalation procedure to resolve the dispute:

13.1.1 For any dispute regarding Implementation Services:

(a) The issue in dispute shall be forwarded, in writing, to the County Project Manager. Within two (2) Business Days after the County's Project Manager has been notified in writing of the issue, the County's Project Manager and Contractor's Project Manager will meet or otherwise communicate directly and make a good faith effort to settle the dispute.

(b) In the event the dispute is not resolved as set forth above within five (5) Business Days after the County's Project Manager has been notified in writing of the issue, as described above, the dispute shall be forwarded, in writing, to Contractor's Project Director and the County's applicable business sponsor. Such executives shall meet in person, if possible, or otherwise communicate directly and make a good faith attempt to settle the dispute.

(c) Should the issue not be resolved by Contractor's Project Director and the County's applicable business sponsor within two (2) Business Days after their receipt of written notice of the dispute, it will be escalated, in writing (or via email) to Contractor's Vice President of Services and the County's applicable business sponsor (of at least a managing director level) who is not involved on a day to day basis with the project. Such executives shall meet at the County's facilities, if possible, or otherwise communicate directly and attempt to settle the dispute within five (5) Business Days after their receipt of the written notice.

(d) In the event the dispute is not resolved as set forth above, either Party may submit the dispute to non-binding mediation, as described in Section 13.1.3 herein.

13.1.2 For any dispute other than regarding Implementation Services, the Contract Administrator and the Client Services Manager shall first try to resolve it. If the dispute is not resolved within ten (10) business days, either Party may escalate the dispute to the respective levels of executive management. These parties shall attempt to resolve the dispute by mutual agreement. In the event the dispute is not resolved as set forth above, either Party may submit the dispute to non-binding mediation, as described in Section 13.1.3 herein.

13.1.3 If the dispute has not been resolved within seven (7) days after either Party escalates the process, either Party may initiate non-binding mediation by sending notice in writing to the other Party identifying the issues in dispute and requesting that they be resolved through mediation and proposing a neutral mediator. The Party receiving the request for mediation shall have three (3) Business Days after receipt of the request to accept or reject the mediation request and to respond to the initiating Party's suggestion of a mediator.

If the request for mediation is rejected or the dispute has not been resolved within thirty (30) days following the date of the request for mediation or such other date as agreed upon by the Parties in writing, either Party may move forward to resolve the dispute in a forum referenced in Section 16.14. The dispute resolution procedures set forth in this Section shall not apply to any dispute in which a party is seeking injunctive relief, in which event non-binding mediation may be pursued if the Parties agree but is not mandatory for the Party initiating the dispute. Should any objection not be resolved in mediation, the Parties retain all their legal rights and remedies provided under State of Florida law. The Party requesting mediation shall be responsible for all costs and fees associated with the mediation, but each Party shall be responsible for its own attorney's fees and costs relating to the mediation.

13.2 During the pendency of any genuine dispute arising pursuant to this Agreement, and after a determination thereof, Contractor and County shall act in good faith to mitigate any potential damages or delays in the project referenced in this Agreement.

ARTICLE 14 WARRANTIES

14.1 Warranty As To Intellectual Property Infringement. Contractor represents and warrants that, at the time of entering into this Agreement, no claims have been asserted or action or proceeding brought against Contractor which alleges that all or any part of the CCI Technology or Services provided under this Agreement (including any customization or interface) or use thereof by County, infringes or misappropriates any patent, copyright, mask copyright or any trade secret or other intellectual or proprietary right of a third party, nor is Contractor aware of any such potential claim. Contractor also represents and warrants that its Services and Deliverables 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. In the event of a breach of this representation and warranty, Contractor shall be responsible for and pay County for any and all actual harm, injury, damages, costs and expenses incurred by County by reason of the breach including as provided in the Indemnification provisions in the Agreement.

14.2 Warranty as to Specifications and Functionality. Contractor warrants that each Roll-Out (upon each respective Go-Live) and the System (upon Final Acceptance) shall conform to and function in accordance with the Statement of Work and shall meet or exceed the functionality and interoperability requirements as defined in the Specifications. In addition, Contractor warrants that its performance of the Statement of Work shall be in accordance with the general methodology proposed by Contractor in the Contractor's RLI response, unless otherwise stated in the Statement of Work.

14.3 Warranty Period. The warranty period for each Roll-Out shall run from the Go-Live Date of each Roll-Out and for a period of one (1) year thereafter ("Roll-Out Warranty Period"). In Roll-Out 2 and Roll-Out 3, Contractor shall extend the warranty (the "Extended Warranty") for the preceding Roll-Out for an additional period of time as follows:

- (a) The Extended Warranty for Roll-Out 1 shall commence upon the later of the commencement of Roll-Out 2 or the end of the Roll-Out Warranty Period for Roll-Out 1 and conclude upon the Go-Live Date for Roll-Out 2;
- (b) The Extended Warranty for Roll-Out 2 shall commence upon the later of the commencement of Roll-Out 3 or the end of the Roll-Out Warranty Period for Roll-Out 2 and conclude upon the Go-Live Date for Roll-Out 3.

In the event County suspends a Roll-Out or otherwise causes delay of more than 90 days in a Roll-Out, the Extended Warranty for the prior Roll-Out (if any) will be suspended for the same duration.

For the avoidance of doubt, the Contractor's warranty will not apply in any manner whatsoever to any Implementation Services, Roll-Out or the System to the extent that any party (including County) other than Contractor, its Affiliates, subcontractors, employees, or authorized other agents has in any way modified or used (either alone or in conjunction with other software, services, equipment or hardware) the Services, Roll-Out or System in a manner other than as stated or permitted in the Statement of Work or otherwise approved by the Contractor in writing.

14.4 Contractor represents that all persons delivering the Services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and Services set forth in the Statement of Work, and to provide and perform such Services to County's satisfaction for the agreed compensation.

14.5 Contractor shall render all Services under this Agreement in a professional manner. The standards to be applied in the performance of Services by Contractor shall be measured as that deemed reasonable for Contractor's employee category applicable to the service being performed and not that of a reasonable person. Contractor shall perform its duties, obligations, and work under this Agreement in a skillful and respectable manner. The quality of Contractor's performance and all interim and final product(s) provided to, or on behalf of, County shall be comparable to industry standards. EXCEPT AS EXPRESSLY SET FORTH HEREIN, CONTRACTOR MAKES NO REPRESENTATIONS, WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, OR ANY WARRANTIES ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

ARTICLE 15 WORK MADE FOR HIRE

15.1 "Custom Work Products" means all finished or unfinished documents, data, configuration files, templates, studies, maps, models, photographs, reports, other work products, or any portions or derivatives thereof, (including all information, ideas, results, data, improvements, developments, functional and technical designs, routines, subroutines, data diagrams and other work products) created by Contractor after the date of complete execution of this Agreement which are the result of, or derived from, any of the services provided by Contractor in furtherance of the work performed under the Statement of Work, or other services rendered to County hereunder. "Custom Work Products" also means application software or computer programs, documentation and technical information or any portions thereof, finished or unfinished, (including any project specific information, ideas, results, data, improvements, developments, functional and technical designs, routines, subroutines, modules, flowcharts, data diagrams, and documentation), created by Contractor after the date of complete execution of this Agreement which are the result of the Services provided by Contractor in furtherance of the Statement of Work performed for or services rendered, to

County hereunder. For the purposes of this Agreement, County shall own all right, title, and interest to all Custom Work Products which are clearly identified as Deliverables in the Agreement, including the Statement of Work and any subsequent Work Authorizations, amendments or procurement agreement documents relating to this Agreement. Contractor expressly acknowledges and agrees that the Custom Work Products shall be deemed to constitute "work made for hire" under the Federal copyright laws (17 U.S.C. Sec. 101) and, alternatively, Contractor hereby exclusively and irrevocably assigns all ownership or other rights Contractor might have in Custom Work Products to County. Without limiting the foregoing, Contractor shall: (a) assign and transmit all Custom Work Products only to County; (b) regard the Custom Work Products as County's exclusive property; and (c) maintain the Custom Work Products as confidential and shall not disclose the same to any other person or entity without County's Contract Administrator's prior written consent. Without limiting the foregoing, it is understood and agreed that County's Board or Purchasing Director may assign, transfer or otherwise convey the Custom Work Products to others without restriction. Except for Custom Work Products specifically identified as such in the Statement of Work, the term "Custom Work Products" shall not include any copyrighted Software of Contractor or a third party nor any previously developed trade secret, previously developed copyrighted material, or other previously developed proprietary material of Contractor but shall not include any custom made modifications or changes to Application Software paid by County hereunder. Where applicable, Contractor will provide County with the source code and object code for Custom Work Products upon Final Acceptance of the System or within thirty (30) calendar days after receipt of a written request by the Contract Administrator, whichever date is earlier.

15.2 To the extent that no Software Deliverables are identified as Custom Work Products in the Statement of Work, Contractor shall own all right, title and interest to all Software Deliverables. Such Software Deliverables shall be licensed to County pursuant to the terms of this Agreement, and Contractor will provide Maintenance for such Deliverables to the extent County has a Maintenance agreement with Contractor, unless County is already receiving Maintenance services under this Agreement.

15.4 County recognizes that Contractor's business depends substantially upon the accumulation of learning, knowledge, data, techniques, tools, processes, and generic materials that it utilizes and develops in its client engagements. Accordingly, to the extent material that is used in, enhanced, or developed in the course of providing Services hereunder is of a general abstract character, or may be generically re-used, and does not contain Confidential Information of County, then Contractor will own such material including, without limitation: methodologies; delivery strategies, approaches and practices; generic software tools, routines, and components; generic content, research and background materials; generic training materials; application building blocks; templates; analytical models; project tools; development tools; inventions; solutions and descriptions thereof; ideas; and know-how; expressly excluding any Custom Software provided under this Agreement (collectively "Know-How"). To the extent such Know-How is contained or reflected in any of the Deliverables or System, Contractor hereby grants County a fully paid up, perpetual license to use such Know-How only for County or governmental purposes. County will not sublicense or sell Know-How to any third party, and

will not use or exploit the Know-How to compete with the information technology and consulting business of Contractor. Nothing in this Agreement is intended to affect Contractor's right to use Know-how.

ARTICLE 16 MISCELLANEOUS PROVISIONS

16.1 EEO COMPLIANCE AND COUNTY BUSINESS ENTERPRISE ("CBE")

16.1.1 EEO COMPLIANCE

(A) Contractor shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement, the solicitation for or purchase of goods or services relating to this Agreement, or in subcontracting work in the performance of this Agreement and shall not otherwise unlawfully discriminate in violation of the Broward County Code, Chapter 16½, as may be amended from time to time. Contractor shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as County deems appropriate.

(B) Contractor shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. Contractor shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by County, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Contractor shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

(C) By execution of this Agreement, Contractor represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes, as amended). County hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle County to terminate this Agreement and recover from Contractor all monies paid by County pursuant to this Agreement, and may result in debarment from County's competitive procurement activities. Any termination of this Agreement by County pursuant to this Section shall not incur a Termination Fee.

16.1.2 CBE COMPLIANCE. The CBE Program, which is implemented under County Business Enterprise Act of 2009 (Broward County Ordinance No. 2009-40, as may be

amended from time to time), referred to as the “Act,” provides for the establishment and implementation of CBE participation goals, initiatives, and other opportunities for County contracts. In completing this Project, Contractor agrees to and shall comply with all applicable requirements of the CBE Program in the award and administration of the Agreement. Failure by Contractor to carry out any of the CBE Program requirements shall constitute a material breach of this Agreement, which shall permit County to terminate this Agreement or to exercise any other remedy available under this Agreement, under the Broward County Administrative Code, under the Broward County Code of Ordinances, or under applicable law, all of which remedies being cumulative. Contractor acknowledges that the Broward County Board of County Commissioners, acting by and through the Director of the Broward County Office of Equal Opportunity, may make minor administrative modifications to the CBE Program which shall become applicable to this Agreement if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to Contractor and shall include a deadline for Contractor to notify County if Contractor concludes that the modification exceeds the authority of this section of this Agreement. 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.

County, acting by and through its Office of Economic and Small Business Development, shall have the right to review each proposed amendment, extension, modification, or change order to this Agreement that, by itself or aggregated with previous amendments, extensions, modifications, or change orders increases the initial Agreement price by ten percent (10%) or Fifty Thousand Dollars (\$50,000) whichever is less, for opportunities to include or increase the participation of CBE firms already involved in this Agreement. Contractor shall make a good faith effort to include CBE firms in work resulting from any such amendment, extension, modification, or change order and shall report such efforts, along with evidence thereof, to the Office of Economic and Small Business Development.

County and Contractor agree that subcontract awards to CBE firms are crucial to the achievement of the Project’s CBE participation goal. Contractor understands that each CBE firm utilized on the Project to meet the participation goal must be certified by the Broward County Office of Economic and Small Business Development. In an effort to assist County in achieving its established goal for this Project, Contractor agrees to meet the following CBE participation goal by utilizing the CBE firms for the following work and dollar values:

| | |
|----------------|--|
| Total CBE Goal | 10% of Implementation Services and Managed Services (i.e., excluding software license fees, software maintenance fees, software hosting fees, software subscription fees, pre-project training, and the performance bond). |
|----------------|--|

Contractor may not terminate for convenience a certified CBE listed as a subcontractor in the Contractor's bid or offer without County's prior written consent, which consent shall not be unreasonably withheld. 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 the Office of Economic and Small Business Development 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, including cause, Contractor shall make good faith efforts to find another CBE firm to perform the work required of the original CBE firm.

In performing services for this Project, County and Contractor hereby incorporate Contractor's participating CBE firms, addresses, scope of work, and dollar value identified on the attached Letters of Intent (Exhibit E). Upon execution of this Agreement by County, Contractor shall enter into a formal contract with the CBE firms Contractor selected to fulfill the CBE participation goal for this Agreement and agrees to provide copies of its contracts with such firms to the Contract Administrator and the Broward Office of Economic and Small Business Development. Contractor shall not terminate a CBE firm listed on the Schedule of Participation without cause unless Contractor has received County's prior written consent. Contractor understands that each replacement CBE firm utilized on the Project to meet the participation goal must also be certified by the Broward County Office of Economic and Small Business Development.

Contractor shall allow County to engage in on-site reviews to monitor Contractor's progress in achieving and maintaining its contractual and CBE Program obligations. Such review and monitoring shall be by the Contract Administrator in conjunction with the Office of Economic and Small Business Development. County shall have access, without limitation, to Contractor's books and records, including payroll records, tax returns and records, and books of account, on five (5) business days' notice, to allow County to determine Contractor's compliance with its commitment to the CBE participation goal and the status of any CBE firm performing any portion of this Agreement.

Contractor understands that it is the responsibility of the Contract Administrator and the Broward County Office of Economic and Small Business Development to monitor compliance with the CBE requirements. In that regard, Contractor agrees to furnish monthly reports regarding compliance with its CBE obligations to the Contract Administrator with its partial pay requests under the payment section(s) in Article 5 of this Agreement, which report shall, as a minimum, include all expenditures made to achieve compliance with its assigned goal or other contractual conditions agreed to by Contractor, the name and business address of each CBE firm participating in this Agreement; a description of the work performed and/or product or service supplied by each CBE firm; the date and amount of each expenditure, and any other information requested by County's representative which may assist County in determining Contractor's compliance with its contractual obligations, or which may assist in the

implementation and enforcement of the Act. The submission of the report required by this subsection shall be a condition of payment to Contractor. The monthly reports shall be submitted on a form which may be obtained at the Office of Economic and Small Business Development. The first report shall be due at the end of the first month of this Agreement (an example of the monthly reporting form is attached hereto as Exhibit F).

In the event of Contractor's noncompliance with its participation commitment to a CBE firm (including without limitation the unexcused reduction of the CBE firm's participation), the affected CBE firm shall have the right to the following remedies if the noncompliance is or was alleged to be due to no fault of the CBE firm, and alleged to be due to the willful action or omission of Contractor:

- The affected CBE firm shall be entitled to damages pursuant to its agreement with Contractor.
- If the CBE firm has the right to arbitrate and institutes arbitration proceedings claiming non-compliance with the Act by Contractor, then in such event the CBE firm may submit the dispute to arbitration. However, arbitration shall not be available as to any dispute between Contractor and County; nor shall County incur any cost, fee, or liability relative to any arbitration proceeding.

Nothing under this Subsection 16.1.2 herein shall be construed to limit the rights of and remedies available to County, including the right to seek its own damages pursuant to this Agreement.

Contractor agrees that nonpayment of a CBE subcontractor or CBE supplier as required this Agreement shall be a material breach of this Agreement and that County's Contract Administrator may, at its option, increase allowable retainage or withhold progress payments unless and until Contractor demonstrates timely payments of sums due to such subcontractors or suppliers. Contractor agrees that the presence of a "pay when paid" provision in its contract with a CBE firm shall not preclude County or its representatives from inquiring into allegations of nonpayment. The foregoing remedies under this Subsection 16.1.2 herein shall not be employed when Contractor demonstrates that failure to pay results from a bona fide dispute with its CBE subcontractor or supplier.

If Contractor fails to comply with the requirements of this Agreement, or the requirements of the County Business Enterprise Act of 2009, County shall have the right to exercise any administrative remedies provided by the Business Opportunity Act of 2004, or any other right or remedy provided in this Agreement or under applicable law, with all such rights and remedies being cumulative.

County may terminate this Agreement without any further liability to Contractor upon the decertification of Contractor as a Certified Business Entity ("CBE") by County's Office

of Economic and Small Business Development (“OESBD”), if Contractor’s status as a CBE was a factor in the award of the Agreement and such status was misrepresented by Contractor. However, such termination shall not be effective until expiration of any timely-filed review or appeal of the decertification decision. Any termination of this Agreement by County pursuant to this Section shall not incur a Termination Fee.

16.2 Reservation of Rights. Contractor and County reserve all rights not specifically granted in this Agreement.

16.3 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. In addition to the foregoing, 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. Notwithstanding any provision in this Agreement to the contrary, if any representation stated in this paragraph is false, County shall have the right to immediately terminate this Agreement and recover all sums paid to Contractor under this Agreement.

16.4 Independent Contractor. Contractor is an independent contractor under this Agreement. Neither Contractor nor County shall have the right to bind each other to any obligation not expressly undertaken under this Agreement.

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

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

NOTICE TO COUNTY:

Broward County Enterprise Resource Planning
Attn: Contract Administrator
115 S. Andrews Ave., Suite 406
Ft. Lauderdale, Florida 33301
Email address: jbruno@broward.org with copy to mgrimm@broward.org

NOTICE TO CONTRACTOR:

CedarCrestone, Inc.
Attention: Cal Yonker, CEO
1255 Alderman Drive
Alpharetta, GA 30005
Email address: cal.yonker@cedarcrestone.com

16.7 Assignment and Performance. Except for subcontracting approved by County at the time of its execution of this Agreement or any written amendment hereto, neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by Contractor without the prior written consent of County. If Contractor violates this provision, County shall have the right to immediately terminate this Agreement. Contractor represents that each person and entity that will provide services 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 agrees that all services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services. County may not assign this Agreement without the prior written approval of Contractor. County may not assign its rights or delegate its duties specifically as to security administration set forth in Sections 7.1 and 7.2 of the HSS without Contractor's prior written consent, and such consent will not be unreasonably withheld. This Agreement shall be binding on each Party's successors and permitted assignees. Notwithstanding anything to the contrary contained in this Section, Contractor may subcontract any portion of the work required by this Agreement to any of the Affiliates of Contractor, provided that the terms and conditions of this Agreement are binding on any such Affiliate.

16.8 Conflicts. Contractor agrees that neither it nor its employees will have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of the judgment and care required to perform under this Agreement. Contractor further agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against County in any legal or administrative proceeding in which he, she, or 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, which is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this Section shall not preclude Contractor or any person from in any way representing themselves, including giving expert testimony in support thereof, in any administrative or legal proceeding. Contractor agrees that each of its contracts with subcontractors performing under this Agreement shall contain substantively identical language to ensure that each subcontractor and its officers and employees meet the obligations contained in this paragraph.

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

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

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

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

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

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

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

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

16.17 HIPAA Compliance. It is understood by the Parties that County personnel or their agents have access to protected health information (hereinafter known as “PHI”) that is subject to the requirements of 45 C.F.R. § 160, 162, and 164 and related statutory and regulatory provisions. The Business Associate Agreement attached as Exhibit D to this Agreement is incorporated as if fully set forth herein and shall apply to the entirety of this Agreement. Where required, Contractor shall handle and secure such PHI in compliance with HIPAA and its related regulations and, if required by HIPAA or other laws, shall include in its “Notice of Privacy Practices” notice of Contractor’s and County’s uses of a client’s PHI. The requirement to comply with this provision and HIPAA shall survive the expiration or termination of this Agreement.

16.18 Payable Interest.

16.18.1 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 paragraph shall not apply to any claim interest, including for post-judgment interest, if such application would be contrary to applicable law.

16.18.2 Rate of Interest. If, for whatever reason, Section 16.18.1 is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, 0.25% (one quarter of one percent) simple interest (uncompounded).

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

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

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

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

16.23 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. If County learns that this representation is false, County shall have the right to terminate this Agreement without any further liability to Contractor. Alternatively, if such representation is false, County, at its sole discretion, may deduct from the compensation due Contractor under this Agreement the full amount of such fee, commission, percentage, gift, or consideration.

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

16.25 Force Majeure. If the performance of this Agreement, or any obligation hereunder, is prevented by reason of hurricane, earthquake, or other casualty caused by nature, or by labor strike, war, or by a law, order, proclamation, regulation, or ordinance of any governmental agency, the Party so affected, upon giving prompt notice to the other Party, shall be excused from such performance to the extent of such prevention, provided that the party so affected shall first have taken reasonable steps to avoid and remove such cause of non-performance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other Party in writing and resume performance hereunder whenever and to the full extent such causes are removed. However, if such non-performance exceeds sixty (60) days, the Party that is not prevented from performance by the force majeure event shall have the right to immediately terminate this Agreement upon written notice to the Party so affected. This Section shall not supersede or prevent the exercise of any right the Parties may otherwise have to terminate this Agreement.

16.26 Nondiscrimination. Contractor may not 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, except that any project assisted by U.S. Department of Transportation funds shall comply with the

non-discrimination requirements in 49 C.F.R. Parts 23 and 26. Contractor shall include substantially similar language in its contracts with any and all permitted subcontractors or sub-consultants.

16.27 Counterparts. This Agreement 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. Signatures provided by facsimile or by e-mail delivery of a .pdf-format file shall have the same force and effect as an original signature.

16.28 Entire Agreement. This Agreement contains the entire agreement between Contractor and County regarding the Services and Deliverables herein. Any modifications to this Agreement shall not be binding unless in writing and signed by both Contractor and County (including through the County's Purchasing Director, if authorized). This Agreement shall not impact the terms and conditions of any prior agreement between County and Contractor.

16.29 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 16 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 16 shall prevail and be given effect. The order of priority shall be as follows:

1. This Agreement, including Articles 1 through 16
2. Exhibits to this Agreement

16.30 Audit Right 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. Solely to the extent books or records relating to Hosting Services provided under this Agreement are subject to express confidentiality or non-disclosure provisions in written agreements between Contractor and a third party, such books and records otherwise subject to audit under this Section may be redacted or limited solely to the extent necessary to allow Contractor to comply with those requirements, provided that the documentation produced to County is sufficient for County to (i) confirm the amounts properly invoiced hereunder and (ii) establish and verify Contractor's performance under this Agreement. Contractor may not enter into to confidentiality or non-disclosure agreements in order to avoid complying with its obligations under this Section.

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 the Agreement. All books, records, and accounts of Contractor are maintained in electronic or digital format. Contractor or its subcontractor, as applicable, shall make same available at no cost to County in form readily-accessible by County.

Contractor and its subcontractors shall preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes, as amended), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by County to be applicable to Contractor's and its subcontractors' records, Contractor and its subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Contractor or its subcontractors. 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.

Contractor shall, by written contract, require its subcontractors, if any, to agree to the requirements and obligations of this Section.

16.31 Time Is Of The Essence. Time is of the essence throughout this Agreement, including the attached Statement of Work or any subsequent Work Authorization(s). The parties acknowledge, however, that the projects hereunder are joint and iterative, such that delay by one party in complying with its obligations may affect the other party's ability to meet any agreed upon schedule. If and to the extent the delay by one party is caused by delay by the other party, such delay will not violate this provision.

16.32 Offshore Limitation.

16.32.1 Contractor shall not host or transfer any County Data outside the territorial limits of the United States of America, without the prior written approval of the Contract Administrator. For any and all Hosting Services provided under this Agreement, Contractor shall host County Information only at the following locations without prior written approval by County: Alpharetta, Georgia, or Nashville, Tennessee.

16.32.2 With the exception of development work and non-Business Hours support services for the Hosting Services or for development work for Implementation Services to be provided under this Agreement (both of which shall be subject to the limitations of Section 16.32.1), Contractor shall not source any development and/or support for this Agreement outside the territorial limits of the United States of America, without the prior written approval of the Contract Administrator.

16.33 Remote Access. The Parties envision that Services to County's development and/or test environment may be provided by remote electronic means (remote access). The manner, including any security restrictions, method, equipment, software and other considerations for remote access (high speed on County's end) shall be provided on a request by request basis

subject to County's internal security requirements. County, at its own expense, shall provide the equipment and software at its location to permit remote access by Contractor. Contractor, at its own expense, shall provide the equipment and software at its location to permit remote access by Contractor to County. Physical access for Contractor personnel to the System as necessary during Services to allow Contractor to perform Services shall be provided by County. In addition, County shall provide, within County's premises, adequate space for Services and Support to be performed on-site. Contractor will assume its respective telephone access costs incurred to perform Services on the System by remote access. Contractor represents and warrants that while performing Services by remote access it will use all commercially available methods not to transmit any type of undocumented software routines or other elements which are designed to, or capable of, permitting, allowing, or causing: (a) unauthorized access to or intrusion upon; (b) disabling of; (c) erasure of; or (d) interference with any hardware, software, data or peripheral equipment whether directly or by transference.

In the event of a breach of this representation and warranty, Contractor, to the extent caused by Contractor, shall be responsible for, and pay County for, any and all actual harm, injury, damages, costs and expenses incurred by County by reason of the breach within thirty (30) calendar days after Contract Administrator's written demand for same.

16.34 Key Personnel. The Key Personnel are the Contractor personnel designated by Contractor, and approved in writing by County's Contract Administrator, who will be responsible for Contractor's day-to-day project operations as described in the Statement of Work. The initial Key Personnel and any changes or substitutions in the Key Personnel must be made known to County, and County must grant prior written approval before any such initial personnel or change or substitution can become effective. County agrees not to unreasonably withhold any such approval; however, such decision is subject to its Contract Administrator's sole discretion. In the event County requests the re-assignment of any applicable personnel, Contractor shall take reasonable steps which may include the replacement the affected Key Personnel with replacement personnel reasonably satisfactory to County. Any such replacement shall occur within thirty (30) days of request by County unless otherwise agreed to in writing by the Parties.

Contractor will provide the Key Personnel as long as said staff are in Contractor's employment. In the event of injury, illness, or death of Contractor's Key Personnel, or if such Key Personnel leave Contractor's employ, Contractor shall replace such individual with an individual reasonably acceptable to County within ten (10) business days after such injury or illness, where such individual is not available to perform the Services or work contemplated by this Agreement, or from the date of departure from employment or of death. Contractor will obtain prior written approval of the Contract Administrator to replace Key Personnel. At the time of Contractor's request, it shall provide the Contract Administrator with such information as necessary to determine the suitability of proposed new Key Personnel. The Contract Administrator will act reasonably in evaluating Key Personnel qualifications.

In the event County's Contract Administrator determines in good faith that the continued assignment of any such Key Personnel is not in the best interests of County, then County's Contract Administrator shall give Contractor written notice to that effect requesting that the employee be replaced. Promptly after its receipt of such a request, Contractor shall investigate the matters stated in the request and discuss its findings with County's Contract Administrator. If Contractor reasonably agrees that replacement of the affected personnel is appropriate, Contractor shall replace the employee with a person of suitable ability and qualification, which replacement shall be subject to the prior written approval of County's Contract Administrator (such approval not to be unreasonably withheld). If Contractor in good faith does not agree that replacement of the affected personnel is appropriate, the replacement shall proceed as stated above provided that (i) any delay in Services caused by the replacement requested by County shall be considered caused by County, and (ii) to the extent the replacement of the requested personnel increases any costs to County under this Agreement, the replacement shall only proceed if, after notification by Contractor of the expected increase prior to replacement and election by County to proceed with the replacement, the increased cost is documented in an appropriate Work Authorization. Nothing in this provision shall be deemed to give County the right to require Contractor to terminate any Contractor employee's employment; it is intended to give County only the right for its Contract Administrator to request that Contractor discontinue using a specific employee on County's work, services, or Project.

Contractor will use its reasonable best efforts to avoid replacing or reassigning any Key Personnel under this Agreement, except in accordance with a County request pursuant to the above paragraph. If, notwithstanding this commitment, it becomes necessary for Contractor to replace any Key Personnel under this Agreement, Contractor will give County as much advance written notice of the replacement as is feasible and will provide County with reasonable written details concerning the proposed replacement. County's Contract Administrator shall have the right to approve the replacement, which approval shall not be unreasonably withheld. At a minimum, Contractor agrees to provide County with at least thirty (30) calendar days' advance written notice of changes to Contractor's project team participants. Contractor agrees to provide County with resumes of proposed new project team participants, and County, through its Contract Administrator and/or ETS, may choose to interview proposed new project team members.

16.35 References To County Or Contractor. Contractor agrees that during the term of this Agreement or thereafter, Contractor may not reference County in Contractor's website, and/or press releases, and, may not place County's name and logo on Contractor's Web site or in collateral marketing materials relating to Contractor's products and services without prior review and written approval by County's Contract Administrator. Further, Contractor agrees that it may not use County's name, logo or any trademarks in any press releases, customer "case studies," and the like) without County's Contract Administrator prior written consent.

Termination or expiration of this Agreement shall not affect Contractor's obligation as stated in this Section. Additionally, upon termination or expiration of the Maintenance portion which

may be under separate written agreement between the Parties, Contractor agrees it will discontinue any previously authorized use of County's name and/or logo on any Web site, press release, or promotional literature.

Contractor's Deliverables shall not contain any references to Contractor on any screenshots, user screens, or other output, except that Contractor may include applicable copyright notices or similar documentation required for protection of Contractor's intellectual property prior to delivering same to County or prior to allowing access by County.

16.36 Taxes. Contractor acknowledges that County is a tax-exempt entity in the State of Florida and County agrees to provide Contractor with written proof of such status, if requested.

16.37 Rights In Documents And Works. Any and all reports, surveys, and other data and data compilations provided or created in connection with this Agreement are and shall remain the property of County, to the extent permitted by law. In the event of expiration or earlier termination of this Agreement, any reports, photographs, surveys, and other data and data compilations, and other documents prepared by Contractor in connection with this Agreement, whether finished or unfinished, shall become the property of County and shall be delivered by Contractor to the Contract Administrator within seven (7) calendar days of expiration or earlier termination of this Agreement by either Party. Any compensation due to Contractor shall be withheld until all documents and/or data are received as provided herein. Contractor shall not compile, collect, store or distribute any data obtained pursuant to this Agreement unless expressly authorized herein. County has the absolute and unrestricted right to convert its data from the format used by the System to any other format. Notwithstanding the foregoing, Contractor retains the right to use and collect Blind Data to the extent set forth in Section 10.2 of the HSS.

16.38 Public Records. Public records are subject to applicable Florida and federal laws, as amended from time to time. The Parties agree that this Agreement, including all its exhibits and any attachments, is a public records document subject to Florida Statutes, including Chapter 119, as amended. Any amendments to the Agreement or any purchase order or any authorizing purchasing document relating to this Agreement, including Exhibit A, shall also be deemed to be a public records document subject to applicable Florida's laws, as amended.

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

- a. Keep and maintain public records that ordinarily and necessarily would be kept and maintained by County were County performing the services under this Agreement;
- b. Provide the public with access to such public records on the same terms and conditions that County would provide the records and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

c. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and

d. Meet all requirements for retaining public records and transfer to County, at no cost, all public records in possession of Contractor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to County in a format that is compatible with the information technology systems of County.

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

16.39 Governmental Immunity. Nothing herein is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract.

16.40 Truth-In-Negotiation Certificate. Signature of this Agreement by Contractor shall act as the execution of a truth-in-negotiation certificate stating that rates, fees, other factual costs and material representations supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which County determines the contract price was increased due to inaccurate, incomplete, or noncurrent rates, fees, other factual costs and material representations. All such contract adjustments shall be made within one (1) year following the expiration or earlier termination of the term of this Agreement.

16.41 Liquidated Damages for Implementation Services. The Parties acknowledge and agree that direct damages (such as loss of server time, loss of subcontractor time, loss of use of facilities) sustained by County due to an unapproved delay (that is no prior written approval of Contract Administrator in his/her sole discretion) in performance by Contractor regarding Implementation Services are difficult to ascertain or estimate with precision. Accordingly, it is hereby agreed that County shall be entitled to liquidated damages in the amount of Three Thousand Dollars (\$3,000) for each calendar day by which Contractor misses the Go-Live Date for each Roll-Out as described in the Implementation SOW. Liquidated damages shall not be assessed to the extent Contractor's performance is excused pursuant to Section 6.5. For purposes of assessing liquidated damages, any delays in achieving the Go-Live Date for any Roll-Out caused by County shall extend the applicable deadline and any subsequent deadlines by the same number of days as the delay caused by County. Any dispute as to the calculation of liquidated damages shall be resolved pursuant to the dispute resolution guidelines as set forth in Article 13 of this Agreement; provided the parties comply with the terms of the dispute resolution procedures set forth in Article 13 of this Agreement, the imposition of daily liquidated damages shall be suspended from the demand for mediation until the conclusion of the mediation proceedings. Notwithstanding anything herein to the contrary, the total liquidated damages assessed for any Roll-Out shall not exceed One Million Dollars (\$1,000,000).

The aforesaid specified amount shall not be construed as a penalty, but as liquidated damages, compensating County for direct damages sustained by County as a result of the delay in performance under the Agreement. In any suit involving assessment or recovery of such liquidated damages, the reasonableness of the daily charge of \$3,000.00 shall be presumed. County may deduct any such liquidated damages from any amounts due Contractor under this Agreement. For avoidance of doubt, County's assessment of liquidated damages for a particular failure does not preclude County from pursuing other remedies, including without limitation, a claim for actual and direct damages, for a subsequent (different) failure.

In the event that Contractor has exceeded an essential project date, as set forth in the project schedule or SOW, exclusive of excusable delays as stated above, and is accruing damages as set forth above, the completion dates for the milestones that are dependent on the accruing milestone may be rescheduled accordingly and concurrent damages shall not accrue if approved in writing by Contract Administrator in his/her sole discretion. Such change to the Project Schedule shall be documented in writing shall be signed by Contract Administrator and Contractor's Project Director.

No act by County in pursuing or effecting its rights under this Agreement shall constitute a waiver of County's right to recover liquidated damages from Contractor and its surety, provided such rights do not include recovery of actual direct damages. If the Contract Administrator permits Contractor to continue and finish work after the time fixed for its completion, such continuation will in no way operate as a waiver on the part of County of its right to receive liquidated damages.

With respect to liquidated damages that accrued prior to the effective date of termination, in the event County terminates this Agreement for cause, the provisions of this Section shall survive such termination.

Any damages that accrue pursuant to this Section shall not limit Contractor's obligation to promptly and diligently cure Contractor's failure to timely complete and deliver in accordance with the applicable Statement of Work. If the Contract Administrator does not elect to exercise the remedy requiring liquidated damages, County may pursue all other remedies, either pursuant to this Agreement, at law, or in equity, with respect to Contractor's failure to timely deliver in accordance with the Statement of Work.

Contractor acknowledges that County, through its Contract Administrator, retains the sole discretion of whether to exercise the remedy of liquidated damages. The Parties further stipulate that the amount of liquidated damages provided for in this Agreement is not intended to be a penalty and is purely intended to reasonably compensate County for unknown and unascertainable damages. The Parties agree that if County allows Contractor to continue completion of the work to be provided pursuant to this Agreement, or any part of it, after the expiration of the time allowed in Article 6 herein above, including extensions of time granted to Contractor by County's Contract Administrator, that County's action shall in no way act as a waiver on the part of County of the liquidated damages due under this Agreement.

16.42 Performance And Payment Bond. Contractor shall maintain and provide County with a performance and payment bond ("Performance and Payment Bond") in the total dollar amount of Five Million Dollars (\$5,000,000) for each Roll-Out. The amount of the Performance and Payment Bond for Roll-Out 2 or Roll-Out 3 may be reduced or waived in the County's sole discretion by the County's Purchasing Director (in which event Contractor will credit County any reduced bond costs, as applicable, in the first invoice submitted under the applicable Roll-Out unless otherwise agreed by the Parties). Each Performance and Payment Bond shall be in place prior to commencement of Implementation Services for the applicable Roll-Out and shall remain in effect for a period of ninety (90) days after final acceptance of the applicable Roll-Out.

16.43 Suspension of Go-Live.

16.43.1 In the event County suspends the Go-Live Date for any Roll Out by more than 90 days (excluding any delays caused by Contractor or postponements or extensions agreed to in writing by the parties), County and Contractor agree that the Performance and Payment Bond for the applicable Roll Out shall be released for the period of suspension, provided that any required bond is reinstated prior to re-commencement of any Services relating to the applicable Roll Out.

16.43.2 In the event County suspends or otherwise causes the delay in any Go-Live Date by more than 150 days (excluding any delays caused by Contractor or postponements or extensions agreed to in writing by the parties), any System Retainage held for any Go Live that has been formally accepted by County shall be released upon request by Contractor. If the delay caused by County for any Go Live exceeds one (1) year (excluding any delays caused by Contractor or postponements or extensions agreed to in writing by the parties), then, within thirty (30) days of request by Contractor, all Retainage held for Deliverables that have been accepted shall be paid to Contractor ("Deliverables Retainage").

16.43.3 Notwithstanding the above, the County may withhold payment of any retainage it reasonable determines to be necessary to protect the County against loss due to any outstanding liens due to Contractor's Services under this Agreement.

16.43.4 If and when the County reinstates the applicable Roll-Out or other applicable Services after a payment of Retainage to Contractor pursuant to this Section 16.43, the amount of Retainage actually released to Contractor pursuant this Section (inclusive of the System Retainage, Deliverables Retainage and the Retainage that would have been applicable to any payment for incomplete or unaccepted Deliverables) shall be credited to County pro rata against the amounts otherwise invoiced to County for the succeeding ninety (90) days or as the parties may otherwise agree.

16.43.5 During any period in which Implementation Services are suspended, any Base Monthly Payments otherwise due will likewise be suspended (and any partial month pro-rated) and will only resume upon resumption of the suspended Implementation Service.

16.43.6 For the purposes of this Section 16.43, “suspension” of any Roll-Out (or “suspends”) includes any action by the County to cease all work on the Roll-Out by Contractor under the Agreement, whether by termination for convenience or termination or suspension for non-appropriation of funds as stated in Section 6.1 of the MSA, as well as termination for cause of the MSA by Contractor.

16.44 Other Eligible Purchasers. Other Constitutional offices of Broward County, municipalities or special districts within Broward County, and other Counties in Florida (collectively “Eligible Purchaser”) may, if they so elect, purchase goods or services from Contractor under the terms and conditions of this Agreement, provided that any such Eligible Purchaser shall be solely responsible for all payment and performance with respect to any such purchased goods or services and shall separately execute an appropriate ordering document, which ordering document shall not be binding in any way upon the County and shall have no effect upon the performance, duration, or enforcement of this Agreement.

16.45 Subcontractors. Contractor agrees and stipulates that, to the extent subcontracting is permitted under this Agreement, the following provisions of this Agreement shall be binding upon any subcontractors of Contractor for any services provided by the subcontractor relating to this Agreement, and Contractor shall ensure that any contract or agreement with any such subcontractor expressly incorporates these provisions: Articles 1 (to the extent defined terms are applicable), 2, 8 (subject to any coverage reductions or changes approved in writing by County’s Risk Management Division), 11, 15, 16.3, 16.8, 16.10, 16.14, 16.17 (as applicable), 16.18, 16.21, 16.22, 16.24, 16.25, 16.26, 16.30, 16.32, 16.33, 16.37, 16.38, and 16.40.

(Remainder of Page 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 _____, 2014, and CEDARCRESTONE, INC., signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

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

By _____
Mayor
____ day of _____, 2014

Insurance requirements
approved by Broward County
Risk Management Division

By Jacqueline A. Birns (dc)
Signature 5/5/14 (Date)

~~Risk Management Division~~
Print Name and Title above
Jacqueline A. Birns
Risk Insurance and
Contracts Manager

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

By RDH 5/5/14
René D. Harrod (Date)
Assistant County Attorney

By Andrew J. Meyers 5/5/14
Andrew J. Meyers (Date)
Chief Appellate Counsel

RDH
05/01/2014
2014-05-01 CedarCrestone MSA Agreement

ERP MASTER SERVICES AGREEMENT BETWEEN BROWARD COUNTY AND CEDARCRESTONE,
INC. FOR CENTRALIZED ENTERPRISE RESOURCE PLANNING (ERP) SOLUTION
RLI No. R0866301R2

Contractor

WITNESSES:

Terry Blackwell
Signature

Terry Blackwell _____
Print Name

Donna J. Pickering
Signature

Donna J. Pickering _____
Print Name

CEDARCRESTONE, INC.

By Calvin J. Yonker
Authorized Signature

Name: Calvin J. Yonker

Title: CEO/President

1st_ day of May, 2014__

ATTEST: Marlene Smith

Marlene Smith
Corporate Assistant Secretary or Authorized
Signature—

(SEAL OR NOTARY)

