



**AGREEMENT FOR SOFTWARE AS A SERVICE  
BETWEEN BROWARD COUNTY AND THE GORDIAN GROUP, INC.**

This Agreement for Software as a Service (the "Agreement") is made and entered into by and between Broward County, a political subdivision of the State of Florida ("County"), and The Gordian Group, Inc., a Georgia corporation authorized to transact business in the State of Florida ("Provider") (collectively, County and Provider are referred to as the "Parties").

**RECITALS**

A. County desires to implement a Job Order Contracting ("JOC") program to enable County agencies to procure facilities construction and renovation work from outside contractors.

B. The Parties desire to enter into this Agreement for implementation of Provider's JOC software, support and maintenance of the software application, and other services related to Provider's JOC software.

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

**ARTICLE 1. DEFINITIONS**

1.1 Board. The Board of County Commissioners of Broward County, Florida.

1.2 Business hours or business day. 8 a.m. to 10 p.m. Eastern Time during weekdays that are not County holidays and on which County has not otherwise declared its offices closed.

1.3 Contract Administrator. Director, Broward County Facilities Management Division, or such person's successor as designated by County in writing.

1.4 Designated Equipment. Any hardware products, other equipment, or configurations that meet the minimum specifications for the applicable System.

1.5 Documentation. All manuals, user documentation, specifications, training materials and other related materials pertaining to the Licensed Technology or System that Provider customarily furnishes to licensees of the Software and purchasers of the services covered by this Agreement.

1.6 Licensed Technology. Any proprietary or third-party software or other intellectual property, including the Documentation, provided to allow County to access and utilize the System in conformance with the Statement of Work or to make the System available to County and third party users over the Internet as a service.

1.7 Purchasing Director. The Broward County Purchasing Director as appointed by the Broward County Administrator.

1.8 Services. All services required of Provider under this Agreement, including as set forth in Exhibit A, to ensure the System is available to County and third party users over the Internet

consistent with the terms of this Agreement. Except as may be limited by Exhibit A, these services include: hosting; making the System available to County and third party users over the Internet as a service; programming or modification/configuration of the System to meet County's ongoing needs; integration, customization, enhancements, or modifications to the System; development or consulting activities; and training or project management.

1.9 Software as a Service (SaaS) or System. The turnkey system provided by Provider pursuant to this Agreement as part of its Services hereunder, including as set forth in Exhibit A, and any Licensed Technology, the Documentation, and the Construction Task Catalog® and associated construction cost data in both published and electronic formats that Provider will make accessible to County and third party users as part of its Services under this Agreement.

1.10 Support and Maintenance Services. The support and maintenance services required for County to achieve and maintain optimal performance of the Licensed Technology and System, including as further described in Exhibit C.

## ARTICLE 2. EXHIBITS

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

<b>Exhibit A</b>	<b>Statement of Work</b>
<b>Exhibit B</b>	<b>Payment Schedule</b>
<b>Exhibit C</b>	<b>Support and Maintenance Services</b>
<b>Exhibit D</b>	<b>Service Level Agreement</b>
<b>Exhibit E</b>	<b>Insurance Coverages</b>
<b>Exhibit F</b>	<b>Work Authorization Form</b>

If there is a conflict or inconsistency between any provision contained in Articles 1 - 13 and any provision contained in any of the Exhibits, the provision of Articles 1 - 13 shall prevail and be given effect unless expressly stated to the contrary.

## ARTICLE 3. SCOPE OF SERVICES & LICENSE

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

3.2 Licensed Technology. Provider grants to County a royalty-free, nonexclusive, non-transferable right to use the Licensed Technology and System for the duration of this Agreement, with no geographical limitations, for the number of users stated in Exhibit A (if none stated, then for an unlimited number of users), including the right to use any embedded third party software within the System or required to operate or allow access to the Licensed Technology or System. Provider agrees to grant each awarded JOC contractor the same rights granted to County under

this section. This right to use the System is granted solely for County governmental and business purposes related to County's Job Order Contracting program ("JOC Program"), and includes on- and off-site access and use of the System by third-party users authorized by County, including those persons or entities with which County may contract to operate the System, and for the benefit of and use by all governmental entities within the County, including the offices of the County constitutional officers.

**3.2.1 Authorized Users and Additional Rights.** Unless otherwise stated in Exhibit A (Statement of Work), County and any of its employees, agents, contractors, or suppliers of services shall have the right to concurrently operate and use the System for the purposes of utilizing, operating, and participating in County's JOC Program, unless otherwise agreed by the Parties in writing. If anything less than unlimited, concurrent use is expressly provided under this Agreement and additional rights or licenses may be required, County's Purchasing Director is authorized to execute a Work Authorization (Exhibit F hereto) to purchase additional rights or licenses for the fee specified in Exhibit B.

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

**3.3 SaaS Services.** Provider shall provide County with the Services set forth in this Agreement in accordance with the Statement of Work set forth in Exhibit A. Provider and the System shall comply for the duration of this Agreement with the Service Level Agreement set forth in Exhibit E. All Support and Maintenance Services for the Licensed Technology and the System are included within the Software as a Service Fee listed on the Payment Schedule (Exhibit B), and will be provided at no additional cost to County except as may otherwise be expressly stated in Exhibit B.

**3.3.1 Updates, Upgrades, and Releases.** For the full term of this Agreement, Provider shall promptly provide to County, with advance notice and at no additional cost, any and all updates (including error corrections, bug fixes, security updates, and patches), upgrades, or new releases to the System including all that Provider has made available to other subscribers or licensees of all or part of the System. Updates, upgrades, and new releases to the System include all JOC platforms currently offered by Provider and JOC platforms that may be subsequently developed by Provider and offered to other entities. All such updates, upgrades, and new releases shall remain the sole property of Provider and shall be deemed to be included within the scope of the rights granted under this Agreement.

**3.3.2 Compatibility.** For the full term of this Agreement, Provider will ensure the continued compatibility of the Licensed Technology and System with all major releases, updates, or upgrades of any third party software used by County for access or operation of the System.

In the event Provider is not be able to support any third party software update, upgrade, or new release that changes major functionality and is not backwards compatible with the System, Provider shall use all reasonable efforts to resolve such issues and to provide optimal functionality of the System in accordance with this Agreement. If Provider is unable to provide continued optimal functionality of the System in accordance with this Agreement due to any third party software release, update, or upgrade, County shall be entitled to terminate the Agreement upon written notice with no further obligation to Provider.

**3.3.3 System Enhancements or Modifications.** By mutual agreement of the Parties, Provider shall incorporate certain features and enhancements into the System or Licensed Technology. Any such request shall be formalized into a Statement of Work that shall define in detail the services to be performed, the financial terms, and the proposed project staffing and schedule. Any such Statement of Work shall be incorporated into a Work Authorization, to the extent permitted by Section 3.5 below, or an amendment to this Agreement.

**3.4 Other Equipment.** County may access and operate the System from any operating system with browsing capability. In the event of System failure, County may access any backup and recovery systems Provider offers to its other customers.

**3.5 Change of Scope Procedures.** Provider acknowledges that Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the scope of services to be provided under this Agreement except as expressly provided herein. To the extent any goods or services under this Agreement, or the quantity thereof, are optional ("Optional Services"), County may select the type, amount, and timing of such goods or services pursuant to a Work Authorization (Exhibit F) executed by Provider and County pursuant to this section, and provided that no such selection, when combined with those goods or services required under the Agreement, would result in a payment obligation exceeding the applicable maximum amount stated in Section 5.1. Notwithstanding anything to the contrary in the Agreement, Work Authorizations for Optional Services pursuant to this section shall be executed on behalf of the County as follows: the Contract Administrator may execute Work Authorizations for which the total cost to County in the aggregate is less than \$50,000.00; the Purchasing Director may execute Work Authorizations for which the total cost to the County in the aggregate is within the Purchasing Director's delegated authority; any Work Authorizations above the County's Purchasing Director delegated authority shall require Board approval. Subsequent to the full execution of any Work Authorization, the Contract Administrator will issue a Notice to Proceed for those authorized Optional Services. Provider shall not commence work on any Work Authorization until after receipt of the applicable Notice to Proceed and Purchase Order.

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

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

4.1 Term. The Agreement shall become effective on the date it is fully executed by the Parties (the "Effective Date"). The term of the Agreement shall be for a period of five (5) years from the date of Final Acceptance (the "Initial Term"). The Parties agree that the Agreement shall remain in full force and effect and County and JOC contractors will have access to the System as long as the Provider is rendering Services related to, or County requires access to, the System to manage any Job Order issued through the System during the term of this Agreement, inclusive of extensions per Section 4.2, but not completed as of the expiration date.

4.2 Extensions. County shall have the option to renew this Agreement for an additional five (5) year term by sending notice of renewal to Provider at least thirty (30) days prior to the expiration of the then-current term. The Purchasing Director is authorized to exercise this renewal option. In the event that unusual or exceptional circumstances, as determined in the sole discretion of the Purchasing Director, render the exercise of an extension not practicable or if no extension is available and expiration of this Agreement would result in a gap in the provision of services necessary for the ongoing operations of the County, then this Agreement may be extended on the same terms and conditions by the Purchasing Director for period(s) not to exceed three (3) months in the aggregate provided that any such extension is within the authority of the Purchasing Director or otherwise authorized by the Board.

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

4.4 Timetable. If Provider fails to achieve Final Acceptance within four (4) months from the Effective Date, County shall have the option to terminate the Agreement by written notice from its Contract Administrator, in which event all sums paid by County under this Agreement, if any, shall be reimbursed to County by Provider within 15 days. For purposes of this paragraph, any delays caused by County prior to Final Acceptance shall extend the Final Acceptance deadline by the same number of days as the delay caused by County.

4.5 Upon the expiration or termination of this Agreement, the Parties acknowledge and agree that Provider will make good faith efforts 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"). Disentanglement is a critical objective of the Parties and a material obligation of Provider under this Agreement. All obligations of Provider under this Agreement shall be construed consistent with this objective.

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

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

**ARTICLE 5. COMPENSATION**

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

Services/Goods	Term	Not-To-Exceed Amount
SaaS Services and JOC Program Fees Per Exhibit B	Initial Term	\$3,200,000.00
SaaS Services and JOC Program Fees Per Exhibit B	Five (5) Year Renewal Term	\$3,200,000.00
Optional Services	Duration of the Agreement (inclusive of any renewals)	\$50,000.00
<b>TOTAL NOT TO EXCEED</b>		<b>\$6,450,000.00</b>

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

5.2 Method of Billing and Payment

5.2.1 Invoices. Provider may submit invoices only for goods provided and services completed in accordance with the Payment Schedule set forth in Exhibit B. Unless otherwise indicated in Exhibit B, an original plus one copy of each invoice must be submitted within fifteen (15) days after the end of the month for which payment is sought, except that the final invoice must be submitted no later than sixty (60) days after all services are completed. Unless otherwise stated in Exhibit B or the applicable Work Authorization, any Optional Services shall be invoiced in accordance with the existing invoicing schedule for any like goods or services provided under this Agreement, including (if applicable) invoiced pro rata for the initial invoice period.

5.2.2 Payments. County shall pay Provider within thirty (30) days of receipt of Provider's proper invoice, as required by the "Broward County Prompt Payment Ordinance" (Broward County Ordinance No. 89-49). Payment shall be made to Provider at the most recent address designated under the "Notices" provision of this Agreement. To be deemed proper, an invoice must comply with all requirements set forth in this Agreement and must be submitted pursuant to any instructions prescribed by the Contract Administrator. County shall have the right to withhold payment of the invoice based on Provider's failure to comply with any term, condition,

or requirement of this Agreement. The Parties hereto agree that any amounts so withheld shall not be subject to payment of any interest by County.

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

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

## **ARTICLE 6. DELIVERY, TESTING AND ACCEPTANCE**

6.1 System. Unless otherwise stated in Exhibit A, Provider shall make the System available to County in accordance with this Agreement within seven (7) days after the Effective Date unless otherwise stated in the Statement of Work. All County license keys, usernames, and passwords shall be authenticated by Provider and perform according to Exhibit A (Statement of Work). The System shall meet or exceed the standards and requirements set forth in the Service Level Agreement for the duration of the Agreement.

6.2 Documentation. Provider shall deliver copies of the Documentation to County prior to County beginning Final Acceptance Testing per Section 6.3, and thereafter shall promptly provide any updated Documentation as it becomes available during the term of this Agreement. Provider represents and warrants that the Documentation is sufficiently comprehensive and of sufficient quality to enable a competent user to operate the System efficiently and in accordance with Exhibit A. County has the right to copy and modify the Documentation as it deems necessary for its own internal use.

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

6.3.1 The testing period shall commence on the first business day after Provider informs County in writing that it has completed the Services required to be performed prior to testing and that the System is ready for testing, and shall continue for a period of up to thirty (30) days.

6.3.2 During the testing period, County may notify Provider in writing of any error or defect in the System so that Provider may make any needed modifications or repairs. If Provider so elects in writing, testing will cease until Provider resubmits for Final Acceptance testing, at which time the testing period shall be reset to that of a first submission for testing.

6.3.3 County shall notify Provider in writing of its Final Acceptance or rejection of the System, or any part thereof, within fifteen (15) days after the end of the testing period, as same may be extended or reset. If County rejects the System, or any part thereof, County shall provide notice identifying the criteria for Final Acceptance that the System failed to meet. Following such notice, Provider shall have thirty (30) days to (a) modify, repair, or replace the System or any portion thereof, or (b) otherwise respond to County's notice. If Provider modifies, repairs, or replaces the System or portion thereof, the testing period shall re-commence consistent with the procedures set forth above in this Section 6.3.

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

## **ARTICLE 7. PROTECTION OF LICENSED TECHNOLOGY AND PROPRIETARY RIGHTS**

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



only in connection with the performance of Services under this Agreement. All rights, title, and interest in and to certain ideas, designs and methods, specifications, and other documentation related thereto developed by Provider and its subconsultants specifically for County, except for any County-specific customizations identified in Exhibit A (collectively, "Developed Works"), shall be and remain the property of County. Accordingly, neither Provider nor its employees, agents, subconsultants, or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of Provider, or any employee, agent, subconsultants, or supplier thereof, without the prior written consent of County, except as required for Provider's performance hereunder. For avoidance of doubt, nothing in this section shall convey to County any ownership rights in Provider's Licensed Technology, Documentation, or System, including, but not limited to, the System's information management application or comparable software program, training and support materials, Construction Task Catalog, and the construction cost data.

7.2 Ownership. Except for custom work products, if any, County acknowledges that all copies of the System (in any form) provided by Provider are the sole property of Provider. County shall not have any right, title, or interest to the System or copies thereof except as expressly provided in this Agreement, and shall take all reasonable steps to secure use and access to the System consistent with maintenance of Provider's proprietary rights therein.

## **ARTICLE 8. CONFIDENTIAL INFORMATION, SECURITY AND ACCESS**

8.1 Public Records Law. As a political subdivision of the State of Florida, County is subject to Florida's Public Records Law, Chapter 119 of the Florida Statutes. Notwithstanding anything else in this Agreement, any action taken by County in compliance with, or in a good faith attempt to comply with, the requirements of Chapter 119 shall not constitute a breach of this Agreement.

8.2 Provider Confidential Information. Provider represents that the Licensed Technology contains proprietary products and trade secrets of Provider. Accordingly, to the full extent permissible under applicable law, County agrees to treat the Licensed Technology as confidential in accordance with this article. Any other material submitted to County that Provider contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Florida Statutes Chapter 119) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET." In addition, Provider must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Florida Statutes Section 812.081 and stating the factual basis for same. In the event that a third party submits a request to County for records designated by Provider as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Provider. Provider shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating

to the non-disclosure of the Licensed Technology or any Trade Secret Materials in response to a records request by a third party.

### **8.3 County Confidential Information.**

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

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

8.3.3 County Confidential Information may not, without the prior written consent of County, or as otherwise required by law, be used by Provider or its employees, agents, subconsultants or suppliers for any purpose other than for the benefit of County pursuant to this Agreement. Neither Provider nor its employees, agents, subconsultants or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to any other person or entity any County Confidential Information without the prior written consent of County.

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

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

8.4 **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.

8.5 **Security and Access.** Any access by Provider to any aspect of the County's network must comply at all times with all applicable County access and security standards, as well as any other

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

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

8.7 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.

8.8 Survival. The obligations under this Article 8 shall survive the termination of this Agreement or of any rights granted under this Agreement.

## ARTICLE 9. WARRANTIES

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

9.2 Limited Warranty. For the full term of this Agreement, Provider represents and warrants to County that the System, when used with the Designated Equipment, will perform substantially as described in the Documentation and in the Statement of Work (Exhibit A). This warranty does not cover any failure of the System resulting from (a) use of the System in a manner other than that for which it was intended; (b) any modification of the System by County that is not

authorized by Provider; or (c) County's provision of improperly formatted data to be processed through the System.

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

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

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

**9.6 Remedy.** In the event of written notice from County of a breach of any representation or warranty stated in this Article 9, Provider will, at no charge to County, promptly correct the breach by either (a) correcting or updating the System, or (b) providing to County other measures that correct the breach. In addition, upon notice from County of any error or defect in the System, Provider will immediately provide to County any known methods of operating the System in a manner that eliminates the practical adverse effects of the error or defect. If Provider is unable to correct a material breach of this article within a reasonable period of time not to exceed fifteen (15) business days, County shall be entitled to cancel the Agreement and receive

a full refund of all amounts paid to Provider. In the event of any replacement of the System or portion thereof, the System as replaced will be warranted as provided above. The remedies in this Section 9.6 are in addition to any other rights and remedies County may have under this Agreement or applicable law.

#### **ARTICLE 10. INDEMNIFICATION AND LIMITATION OF LIABILITY**

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

10.2 **Limitation of Liability.** Neither Provider nor County shall be liable to the other party for any damages under this Agreement that exceed the largest of the following amounts: (a) \$100,000; (b) twice the maximum compensation amount specified in Section 5.1; or (c) the amount of insurance Provider is required to provide under Article 11. Neither party shall be liable for the other party's special, indirect, punitive, or consequential damages (including damages resulting from lost data or records other than costs incurred in the recovery thereof), even if the party has been advised that such damages are possible, or for the other party's lost profits, lost revenue, or lost institutional operating savings. These limitations of liability shall not apply to (i) any Claim resulting from Provider's actual or alleged disclosure of County Confidential Information or resulting from an actual or alleged data breach in violation of applicable law, (ii) any Claim resulting from an actual or alleged infringement of any interest in any Licensed Technology, the System, or other intellectual property, or (iii) any indemnification obligation under this Agreement.

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

## **ARTICLE 11. INSURANCE**

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

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

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

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

Mold, fungus, or bacteria

Terrorism

Silica, asbestos or lead

Sexual molestation

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

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

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

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

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

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

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

**Privacy/Security Breach Response coverage, including Notification Expenses**

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

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

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

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

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

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

11.9 If Provider uses a subcontractor, Provider shall require each subcontractor to endorse County as an "Additional Insured" on the subcontractor's Commercial General Liability policy.

**ARTICLE 12. TERMINATION**

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



for cause, such termination shall, to the full extent permissible under applicable law, be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

12.2 County may terminate this Agreement if Provider is found to have submitted a false certification pursuant to Section 287.135, Florida Statutes, if Provider has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or if Provider has failed to promptly implement corrective action for audit deficiencies upon reasonable notice by County. Notwithstanding anything contained in this Agreement to the contrary, the rights and obligations of the Parties under this paragraph shall be governed by Section 287.135, Florida Statutes, to the full extent applicable.

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

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

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

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

### **ARTICLE 13. MISCELLANEOUS**

13.1 Rights in Documents and Work. Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement shall be and remain the property of County and, if a copyright is claimed, Provider hereby grants to County a nonexclusive perpetual license to use the copyrighted item(s), to prepare derivative works, and to make and

distribute copies to the public. In the event of termination or expiration of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Provider, whether finished or unfinished, shall become the property of County and shall be delivered by Provider to the Contract Administrator within seven (7) days of termination or expiration of this Agreement by either party. For avoidance of doubt, nothing in this section shall convey to County any ownership rights in Provider's Licensed Technology, Documentation, or System, including, but not limited to, the System's information management application or comparable software program, training and support materials, Construction Task Catalog, and the construction cost data.

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

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

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

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

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

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

b. Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

c. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to County; and

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

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

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

**IF PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF FLORIDA STATUTES CHAPTER 119 TO PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 357-5758, CHENRY@BROWARD.ORG, 115 S. ANDREWS AVE., SUITE 501, FORT LAUDERDALE, FLORIDA 33301.**

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

13.5 Public Entity Crime Act. Provider represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. In addition to the foregoing, Provider

further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Provider has been placed on the convicted vendor list. Notwithstanding any provision in this Agreement to the contrary, if any representation stated in this paragraph is false, County shall have the right to immediately terminate this Agreement and recover all sums paid to Provider under this Agreement.

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

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

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

NOTICE TO COUNTY:

Broward County Facilities Management Division  
Attn: Director  
115 S. Andrews Ave., Suite 501  
Ft. Lauderdale, Florida 33301  
Email address: scampbell@broward.org

NOTICE TO PROVIDER:

The Gordian Group, Inc.  
Attn: General Counsel  
30 Patewood Drive, Suite 350  
Greenville, SC 29615  
Email address: A.Lesher@Gordian.com

13.9 Assignment. Except for subcontracting approved by County at the time of the execution of this Agreement or any written amendment hereto, neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by Provider without the prior written consent of County, such consent not to be unreasonably withheld. If Provider violates this provision, County shall have the right to immediately terminate this Agreement.

13.10 Conflicts. Provider agrees that neither it nor its employees will have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Provider's loyal and conscientious exercise of the judgment and care required to perform under this Agreement. Provider further agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against County in any legal or administrative proceeding in which he, she, or Provider is not a party,

unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Provider or any person from in any way representing themselves, including giving expert testimony in support thereof, in any administrative or legal proceeding. Provider agrees that each of its contracts with subcontractors performing under this Agreement shall contain substantively identical language to ensure that each subcontractor and its officers and employees meet the obligations contained in this paragraph.

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

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

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

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

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

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

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

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

**13.19 Payable Interest**

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

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

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

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

**13.22 Domestic Partnership Requirement.** Unless this Agreement is exempt from the provisions of Section 16½-157 of the Broward County Code of Ordinances, which requires County contractors to provide benefits to domestic partners of their employees, Provider agrees to fully comply with Section 16½-157 during the entire term of the Agreement. If Provider fails to fully comply with that section, such failure shall constitute a material breach which shall allow County

to exercise any remedy available under this Agreement, under applicable law, or under section 16½-157. For that purpose, the contract language referenced in Section 16½-157 is incorporated herein as though fully set forth in this paragraph.

**13.23 Drug-Free Workplace.** It is a requirement of County that it enter into contracts only with firms that certify the establishment of a drug-free workplace in accordance with Chapter 21.31(a)(2) of the Broward County Procurement Code. Execution of this Agreement by Provider shall serve as Provider's required certification that it has or will establish a drug-free 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.

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

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

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

13.27 Nondiscrimination. Provider 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 nondiscrimination requirements in 49 C.F.R. Parts 23 and 26. Provider shall include substantially similar language in its contracts with any and all permitted subcontractors or sub-consultants.

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

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

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



IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_\_ day of \_\_\_\_\_, 2019, and PROVIDER, signing by and through its \_\_\_\_\_, duly authorized to execute same.

COUNTY


ATTEST:


BROWARD COUNTY, by and through  
its Board of County Commissioners

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

By: \_\_\_\_\_  
\_\_\_\_ day of \_\_\_\_\_, 2019

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

By:  3/19/19  
\_\_\_\_\_  
Neil Sharma (Date)  
Assistant County Attorney

By:  3/15/19  
\_\_\_\_\_  
Rene D. Harrod (Date)  
Deputy County Attorney

NS/RDH  
03/15/2019  
2019-03-15 JOC RFP – SaaS Agreement  
#337100.16

PROVIDER

WITNESSES:

Deborah E. Bates  
Signature

Deborah E. Bates  
Print Name of Witness above

Clarice M. Byrd  
Signature

Clarice M. Byrd  
Print Name of Witness above

THE GORDIAN GROUP, INC.

By: Ammon T. Leshner  
Authorized Signor

Ammon T. Leshner, VP and General Counsel  
Print Name and Title

15 day of March, 2019

ATTEST:

Roy E. Kemper  
Corporate Secretary or other person  
authorized to attest  
Roy E. Kemper, Secretary

(CORPORATE SEAL OR NOTARY)



**Exhibit A – Statement of Work**

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

**1. PROJECT REQUEST**

Provider will assist in the development, implementation, and support of the JOC Program.

The primary goal of the program will be to enable County agencies to rapidly engage contractors of various sizes to perform building and facilities construction, renovation, and related site work.

Provider will provide the System for the procurement and documentation of contractor services for maintenance, renovation, repair, and minor construction projects. Provider will assist County in the successful implementation of the JOC Program with the following phases:

- Phase I: Program Development
- Phase II: Document Preparation
- Phase III: Procurement Support
- Phase IV: System Implementation
- Phase V: Program Implementation and Final Acceptance Testing
- Phase VI: Program Training for County and third-party users; and Ongoing Support

**2. SERVICES DESCRIPTION**

Provider must train County staff and other end users identified by County in the use and operation of the System. The System must provide access to the web-based unit price catalog, and Provider will provide County staff ongoing administrative support to ensure the JOC Program is performing pursuant to this Statement of Work. The JOC Program will permit County agencies to submit needed work through the System using the catalog as a guide to estimate the total cost of work. County’s Purchasing Division will initiate the competitive bidding process to select a pool of general contractors to perform the scope of services requested by the agency and County will enter into contracts with the selected bidders. Provider will only be compensated based on a percentage of each work order as set forth in Exhibit B.

**Software.** Provider will provide the following software as a service under this Agreement:

<b>Software Suite, Version &amp; Module</b>	<b>Quantity &amp; Type of License</b>	<b>Describe Purpose, Functionality &amp; Expected Operation of Software</b>
JOC Program Software (most current version)	Unlimited Subscription for County and authorized third-party users	Permits County’s using agencies to procure construction services on an on-call basis through firm fixed price job orders which are issued to a construction contractor through the JOC Software platform. Permits Contractors the ability to provide construction services on an on-call basis through firm fixed price job orders which are issued to a construction contractor through the JOC Software platform.

### 3. **TECHNICAL APPROACH**

A. **Phases.** County will issue one (1) Notice to Proceed ("NTP") for all of the Services, in the following Phases:

#### **Phase I - Program Development**

Provider shall work with and take input from County's using agencies to develop the JOC Program. Program Development shall include reviewing and assessing County's needs to determine the size of the program and, in conjunction with County staff, develop policies and procedures to implement and administer the JOC program.

Provider shall provide experienced personnel responsible for the JOC Program Development tasks and deliverables as set forth herein, and shall report directly to the designated County representative. Provider shall be available to assist with any JOC Program related issues and complete all deliverables for Phase I pursuant to Section 5 of this Statement of Work.

#### **Phase II - Document Preparation**

Provider shall develop competitive bidding documents, including a unit price book/catalog, project manual, technical specifications, and contractual requirements (collectively, the "JOC Program Documents"). All competitive bidding documents must be approved by County prior to full System implementation. The JOC Program Documents will be developed specifically for County based on input from County agencies and Provider's past experience in administering other JOC program. Each task shall be specifically priced for County and supported by detailed, performance based technical specifications.

**Deliverables:** Provider shall complete all deliverables for Phase II pursuant to Section 5 of this Statement of Work.

#### **1. Unit Price Book**

The unit price book shall contain individual tasks along with an associated unit price. The unit price book shall be customized to fit the needs of County. Each unit price shall include the industry-standard equipment, material and labor prices within Broward County's geographical region. The pricing of the unit price book shall be specific to County, shall not use factors (e.g., markups, markdowns) to localize unit prices, and shall incorporate current Broward County area prevailing wage rates, as well as actual local equipment and material prices. These local prices shall be obtained in the local Broward County area by Provider's staff and provided to County in electronic and hard copy form. Electronic versions shall be compatible with the Windows operating system. The unit price book shall be available within the System with full access granted to County and all JOC contractors.

Provider shall conduct a series of review conferences with County staff to ensure the appropriate construction and related tasks are included in the unit price book(s). If any items are not already included in Provider's task database, Provider shall develop items for County. These

new tasks shall be for the exact construction product or material that County requires for any of its projects.

The unit price book shall be updated by Provider as needed throughout the duration of the Agreement, and must be updated at least once every three (3) years.

## **2. Technical Specifications**

Provider will prepare customized technical specifications in conjunction with the unit price book to construct line items and any County standards and specifications will be incorporated. Provider shall organize a series of meetings with the appropriate staff to evaluate existing County technical standards and specifications. These technical standards and specifications shall then be incorporated into a comprehensive set of performance based technical specifications to be used for each of the JOC Program construction contracts.

## **3. Contractual Requirements**

The contractual requirements shall be prepared in conjunction with County staff and shall incorporate JOC Program contract language and process, and any applicable forms. These will include, but not be limited to:

1. Detailed Scope of Work
2. Contractor's Price Proposal
3. Schedule of Subcontractor Participation forms
4. Proof of Advertisement through Provider's website
5. Letters of Intent
6. Non Pre-priced quotation forms for task items not listed in the unit price book
7. Technical Specifications
8. Unit Price Book

### **Phase III - Procurement Support**

Provider must provide County with technical and outreach support to the contracting community during the procurement phase. The Procurement Support phase incorporates all the activities necessary to establish the structure of the JOC Program, to inform internal County staff as well as the contracting community about the JOC Program, and to procure the actual JOC Program contractors. Provider shall also provide comprehensive procurement support during the Procurement Support phase of the project.

### **Phase IV – JOC Program Implementation and Final Acceptance Testing**

The System must provide for interaction between County project managers and contractors regarding request for proposals, proposal reviews, and generation of all project documents, including those requiring signatures. The System shall be capable of search, retrieval, and reporting functions. Provider shall test and debug the System under actual field conditions prior to implementation.

The System shall incorporate a comprehensive JOC information management system. This information management system shall be compatible with the Windows operating system for personal computers. The System shall be capable of providing full project tracking, developing cost proposals, preparing independent County estimates, generating all project documentation, providing project scheduling, budgeting and cost control, and generating reports based on project manager, contractor, or agency. Provider shall prepare monthly JOC Program reports and meet with County to determine JOC Program deficiencies and ways to improve performance.

**1. County Access**

The System shall contain two versions: one for access by County and another for access by County's JOC Program contractors. The owner's (i.e., County's) component shall include a complete management module as well as a verification module for validating contractor's proposals. This shall allow the owner to control user access to the sections, fields, forms, and reports. It shall logically step through each phase of the process creating a fully auditable System. The System shall have security at every level by both user and group. The System shall have an automated validation process which shall eliminate the requirement to double check each unit price.

**2. Contractors' Access**

The bidding JOC Program contractors' version shall have the complete capability of building JOC proposals. The System shall be capable of generating all of the Job Order Contract documents including the contractor's proposal, an independent cost estimate, and all management reports and forms. The System shall have the ability to track subcontractors (certified and non-certified) for each individual JOC Program construction project.

**3. Internet Based**

The System shall operate over the Internet, using Provider's servers (or third-party servers, subject to County prior written approval). This solution shall eliminate the need for County to purchase any special hardware or software and shall allow the end user to operate from a Windows computer or Macintosh anywhere an Internet connection is present, using any one of multiple web browsers. There shall be no restrictions on the number of concurrent users by County or County contractors.

**4. System Application Setup**

Provider shall customize the System to meet the specific needs of County with regards to County information such as locations and users as well as specific forms and reports.

**5. System Application Testing**

Provider shall be responsible for ensuring that the System operates for both County and County's JOC contractors. Testing and debugging the County version of System shall occur under actual field conditions prior to the implementation of the JOC Program, pursuant to the Final Acceptance Test Plan outlined in this Statement of Work.

**6. Software Application Support**

Provider shall provide continuous support to County during the term of the Agreement

including upgrades, debugging, telephonic assistance, and other related support pursuant to Exhibit C.

### **Phase V – Program and System Training**

Provider shall develop a comprehensive JOC training program which shall be organized as a series of independent training modules. Provider shall train selected County and JOC contractor groups in only those modules which are applicable to them. The hands-on training program shall be based on approved County policies and procedures. Training shall include a training and reference manual with sample Job Orders, Execution Procedures, and forms. Provider shall conduct as many training courses as is reasonably required to ensure that County staff is fully prepared to execute the JOC program. The training courses shall include exercises derived from actual County projects. Provider shall also provide training of the JOC contractors, including both software and procedural training.

Provider's JOC training program shall be comprised of the following five modules:

#### **1. JOC Overview**

The JOC Overview module shall be designed to familiarize County staff with the overall JOC Program concept. Topics shall include an overall JOC Program orientation as well as a discussion on how the JOC Program shall be implemented. In addition, the JOC Program shall be presented from a contractor's perspective in order for County staff to better understand the contractor's risk and potential reward. Included in this module shall be how a contractor develops a JOC bid. The components of the JOC Overview Module shall be:

- a. JOC Concept
- b. JOC Program
- c. Contractor's Perspective
- d. Questions & Answers

Copies of all the materials used in the presentation shall be contained in the training manual.

#### **2. JOC Contractual Requirements**

The JOC Contractual Requirements module shall be a detailed discussion of the contractual terms of the contracts. This module is designed for project managers and procurement staff. The terms and conditions are the "rules" under which the JOC Program shall be implemented. It is critical that key operational and procurement staff fully understand the contract documents.

The components of the module should include:

- a. General Conditions
- b. JOC Specific Conditions
- c. Lessons Learned
- d. Questions & Answers

Copies of all materials and the contract terms and conditions shall be contained in the training manual.

### **3. JOC Refresher**

The JOC Refresher Course shall be a workshop discussion of all aspects of the JOC Program process that shall be offered to those who have had an opportunity to get some actual experience with the process. This module shall be designed for project managers and procurement staff. The focus of this session shall be on the lessons learned and the sharing of those lessons with other members of staff. This session shall also help identify if there are any problems with the execution process. It is recommended that every project manager attend at least two JOC refresher courses, one after about a month's experience and the second one after three month's experience.

The components of the JOC Refresher Module shall be:

- a. Procedures Review
- b. Lessons Learned
- c. Open Discussion

Copies of the JOC Reference Guides shall be provided to each project manager.

### **4. Software Application**

The software application module shall provide a thorough overview of functions such as online learning applications, webinars, and tutorials. The software application module shall be designed for project managers, with a limited module utilized for contractors. Training shall be provided to staff through each step of the JOC Program process, from project initiation, to reviewing and validating a contractor's proposal, to project closeout. The primary interface of software application shall be Windows Explorer based.

The components of the software application training module will include:

- a. Administering software application
- b. Software Application Starting Out
- c. General JOC Management
- d. Proposal Development
- e. Reports
- f. Utilities



## 5. JOC Execution Procedures

The JOC Procedures module shall be a comprehensive review of approved County Procedures for JOC Program, as well as hands-on development of actual Job Orders. This module shall be designed for construction project managers. The class should be given the opportunity to complete a series of practical exercises designed to develop a complete Job Order based on an actual County project. In addition to the classroom work, experienced staff of the Provider shall accompany each project manager during the development of actual Job Orders with the contractor. Provider staff shall be with the County project manager to answer questions and to give advice as needed.

The components of the JOC Procedures module will include:

1. Execution Procedures
2. Contract Forms
3. In-Class Practical Exercises
4. On-Site Support

The JOC Procedures module shall be presented in a mixed lecture and practical exercise format using computer generated overhead projection materials and handouts and shall be scheduled to be given in three-hour blocks. Copies of County execution procedures and sample forms shall be contained in the training manual. Provider shall also prepare a reference guide highlighting the procedures and forms that need to be completed for each step in the process.

### **Phase VI: Ongoing Support**

Provider shall provide the following ongoing support services for the duration of the Agreement:

#### **1. JOC Contract Preparation**

Provider shall provide the County with JOC contract documents for new JOC contracts and JOC re-bids as follows:

- a. Update unit price book and technical specifications. Provider shall work closely with the County's project managers on existing contracts, to identify non-prepriced tasks, price those tasks, and add to the unit price book to minimize the number of non-prepriced items. Provider shall update, as often as required by the County, the technical specifications or contractual requirements.
- b. Monitor recent changes and recommend improvements to the Contract and General Conditions to clearly specify the requirements of County.
- c. Further develop and implement pre-award criteria.
- d. Identify new processes to further define contract requirements and contractor capabilities to ensure that County retains qualified JOC contracts.

e. Customize the JOC process and Contract and General Conditions documents to meet the needs of County.

## **2. Procurement Support**

Provider shall provide procurement and outreach support during the solicitation of new JOC Program contractors, including preparing necessary bidding documents. Provider shall also participate and provide presentations for all pre-bid conferences and external outreach to the local contracting community. Provider shall evaluate the contractor's proposed management and staffing plan and assisting new contractors during mobilization. Provider shall attend all pre-bid and outreach meetings and make presentations, including:

- a. Explanation of the JOC Program concept;
- b. How to Bid;
- c. Calculation of the Adjustment Factor/Multiplier;
- d. County's expectations from the JOC Program contractors;
- e. Critical bid information;
- f. Dissemination of the contract documents;
- g. Lessons learned from historical administration of the JOC Program;
- h. Best practices for the intending bidders;
- i. Risks and benefits of JOC Program construction contracts;
- j. Evaluation of the Unit Price Book/Catalog;
- k. How to Staff a JOC; and
- l. Question and answer sessions.

## **3. Contract Implementation and Technical Support**

Provider shall provide the following contract implementation and technical support services during the term of the Agreement:

- a. Train and assist County staff in management of the JOC program.
- b. Conduct complete training sessions for new employees and contractors in the execution of JOC and the use of the System on an as needed basis.
- c. Conduct periodic refresher training sessions for County staff and JOC contractors in the execution of JOC and the use of the System.
- d. Continue to develop and customize procedures, training materials, forms and reports to facilitate the management and execution of JOC Program.
- e. Work closely with the County and the awarded contractors to ensure that both parties are executing JOC in accordance with the established procedures, advertising to subcontractors (including Broward County small business program firms), and adhering to other contract requirements. Assist the County in dealing with the contractors to ensure that they are meeting the terms of the contract. Advise the County to discontinue the issuance of Job Orders to non-responsive JOC contractors.
- f. To assist in advertising to Broward County small business program firms

(including the Small Business Enterprise ("SBE") and County Business Enterprise ("CBE") programs administered by OESBD), the Provider will develop auto-generated weekly reports to be electronically distributed to OESBD. The weekly reports will include County identified project information based on the current phase of a project and include subcontracting opportunities for individual JOC projects. OESBD will include the report as part of its weekly published newsletter (or other electronic distribution method) to inform County contractors of subcontracting opportunities.

g. Troubleshoot specific high-profile projects by meeting with the project managers and contractors to expedite development and construction of the Job Orders.

h. Assist the County in conducting periodic reviews of the JOC Program, performance, and effectiveness. Develop documentation, reports and statistics regarding essential elements of the program. Document this information for senior management review and evaluation.

i. Conduct periodic audits and reports of JOC projects to verify compliance with County JOC procedures and policies, and use the results of those audits and reviews to formulate reports to Contract administrator or designee.

j. Provider shall make available upon request an on-site and full time off-site presence for County. During the on-site visits, Provider shall review on-going project development and execution and recommend improvements, if necessary. Provider shall remain on-call at all times for any unforeseen problem that may require immediate attention.

#### **B. Security and Access**

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

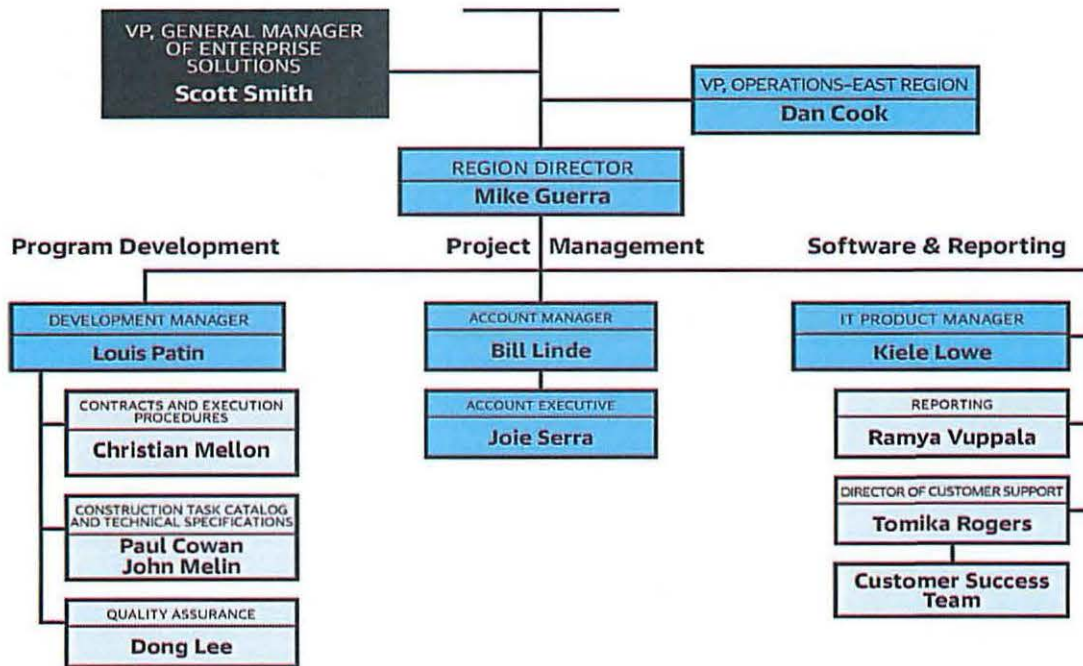
#### **4. MANAGERIAL APPROACH & COMMUNICATION**

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

##### **A. Key Personnel:**

Provider will utilize the team shown in the organizational chart below to provide JOC services for the JOC Program, unless otherwise approved by County's Contract Administrator. Key Personnel will include Mike Guerra, Bill Linde, and Joie Serra. The Region Director, Mike

Guerra, will be the primary contact for County on all management-level operations requests and issues.



**B. Reporting**

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

- All communication by Provider regarding this Agreement will be done through the Contract Administrator or designee.
- Provider will provide Monthly Reports detailing program performance, as requested, including any and all new tracking reports which are tailored, useful, and applicable to County including, but not limited to:
  - a. Number of purchase orders issuance within the month
  - b. Number of days from Joint Scope meeting to Purchase order issuance
  - c. Number of days from Request for Proposals to finalized proposal
  - d. Number of proposals issued (separated by contractor)
  - e. Number of proposals finalized (separated by project manager and contractor)

**5. DELIVERABLE PRODUCTS AND SERVICES**

Each Deliverable will be deemed accepted only upon written notice of preliminary acceptance by the County representative(s) indicated below. County acknowledges that the deadlines set forth below will require substantial coordination, input and deliverables from each party. Neither party shall be deemed to be in breach of this Agreement for any failure to meet the deadlines set forth below.

**DELIVERABLES: Phase I – Program Development**

No.	Description	Deadline from Notice to Proceed	Requirements or Preliminary Acceptance Criteria (required in writing)
1	Development of JOC Program	60 days	Approved by Contract Administrator and Purchasing Division
2	Reviewing and Accessing County's Needs	60 days	Approved by County Project Managers and Contract Administrator
3	Development of Policies and Procedures	60 days	Approved by County Purchasing Division and Contract Administrator

**DELIVERABLES: Phase II – Document Preparation**

No.	Description	Deadline from Notice to Proceed	Requirements or Preliminary Acceptance Criteria (required in writing)
1	Delivery of proposed draft of Customized County Procurement Documents for JOC	60 days	Approved by Purchasing Division
2	Development of Construction Task Catalog	90 days	Approved by County Project Managers

No.	Description	Deadline from Notice to Proceed	Requirements or Preliminary Acceptance Criteria (required in writing)
3	Develop JOC Specifications	90 days	Approved by County Project Managers
4	Develop JOC Procedures	60 days	Approved by County
5	Marketing and outreach	90 days	Approved by OESBD.
6	Prepares JOC Software with customized Construction Task Catalog and JOC Specifications	10 days prior to date of advertisement of first JOC contracts	Approved by Project Managers
8	Develop JOC Training Program and Reference Manual	10 days prior to date of advertisement of first JOC contracts.	Approved by Contract Administrator

**6. OPTIONAL SERVICES**

Provider shall provide additional services as may be requested by County relating to the System. Such additional services shall be purchased at the rates set forth in Exhibit B or as otherwise agreed by the Parties in an applicable Work Authorization.

**7. FINAL ACCEPTANCE TEST PLAN**

County will conduct Final Acceptance Testing upon written notification from Provider that the System is ready for testing. The following test criteria must be met prior to County's issuance of Final Acceptance of the System:

Test No.	Acceptance Test Criteria	Pass/Fail
1.	Demonstrate how the System allows for interaction between County Project Managers and contractors regarding request for proposals, proposal reviews, and generation of all project documents including those requiring signatures. Demonstrate how the System handles supplemental job orders for additional work or unforeseen existing conditions.	
2.	Demonstrate the System's search, retrieval, and reporting functions including how historical data is viewed and tracking of milestone dates.	
3.	Present how the System incorporates a comprehensive JOC information management system such as Construction Catalog with	

Test No.	Acceptance Test Criteria	Pass/Fail
	line items (including how Non-Pre-priced Items are managed), Technical Specifications and Project Manual/s.	
4.	Demonstrate County's software web-based access to the System and functionality of complete management and verification module to be used for validating contractor's proposals.	
5.	Demonstrate Contractor's web-based access to the System for building JOC proposals, project management review and finalization of proposals including all signature documents required for purchase order issuance.	
6.	Show how the System operates over the Internet. System shall allow the end user to operate from a Windows computer or Macintosh anywhere an Internet connection is present.	
7.	Demonstrate how the System can be customized to meet the specific needs of the County with regards to County information such as locations and users as well as specific forms and reports.	
8.	Demonstrate the System's ability to auto-generate weekly JOC project reports and send to OESBD for distribution to County contractors.	
9.	Demonstrate the ability to edit entered data. (Ex. Project file location)	
10.	Demonstrate the user process on how to search for and retrieve records. (Ex., historical data, current projects)	
11.	Demonstrate the ability to produce an audit trail for various document activities. (Ex., add, delete edit a file)	
12.	Demonstrate the ability to notify users for pending approvals of various tasks. (Ex., pending signature documents, purchase orders, project status)	
13.	Provide demonstration of all training provided for both Owner (County) and Contractor.	
14.	Demonstrate the user security functionality. (Ex., manage user role, access level, user information)	
15.	Demonstrate the user access to view status of their projects, requests, and create/view/print projects.	
16.	Demonstrate how the end user would seek assistance with software issues.	
17.	Demonstrate the reporting functionality of the system. (Ex., types of reports, exportable formats, custom report options.)	
18.	Demonstrate the online system documentation including user information, administration, and accessibility.	
19.	Demonstrate how historical and current information will be provided to the Owner and Contractor after contract expiration.	

**Exhibit B – Payment Schedule**

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

Provider will invoice County only a percentage fee, as set forth below, based on the total dollar amount of all individual projects ordered through the System that year. The percentage fee is set for Year 1 and Year 2 after Final Acceptance. Starting in Year 3 after Final Acceptance and each year thereafter, including any renewal years, the percentage fee will be set for each year based on the total dollar value of all individual projects ordered through the System in the prior year. Provider will invoice County monthly in arrears for the percentage fee owed to Provider per the charts below for all individual projects ordered through the System during the prior month and provide County a report with each invoice that identifies each invoiced project, the dollar amount of the project, and the fee to be invoiced to County based on the dollar amount of the project and fee percentages set forth below. If, after submitting an invoice and prior to County issuing a Notice to Proceed for an individual project, County issues written notice of cancellation of an individual project, Provider will reimburse to County any amount paid by County to Provider for the applicable project. For purposes of determining the projects ordered each year, the date of the Purchase Order shall govern as the date of the applicable order.

**Volume Based Fees for Year 1 and Year 2 after Final Acceptance**

Term	Description	Invoicing	Percentage Fee
Years 1 & 2 after Final Acceptance	Set Percentage Fee for all projects ordered through the System for the applicable Year	Monthly in arrears	2.48%

**Volume Based Fees for Years 3-10 after Final Acceptance**

For Years 3-5 and Years 6-10 (if applicable) after Final Acceptance, the percentage fee for each year will be based on the total dollar amount of all individual projects ordered through the System in the immediately preceding contract year as follows:

Total Dollar Amount of all Individual Projects Ordered Through the System in Year Prior	Percentage Fee
\$0 - \$5,000,000	2.95%
\$5,000,000 - \$7,000,000	2.66%
\$7,000,000 - \$10,000,000	2.63%
\$10,000,000 - \$13,000,000	2.57%
\$13,000,000 - \$16,000,000	2.51%
\$16,000,000 - \$20,000,000	2.48%
\$20,000,000 - \$25,000,000	2.45%
\$25,000,000 - \$30,000,000	2.42%



<b>Total Dollar Amount of all Individual Projects Ordered Through the System in Year Prior</b>	<b>Percentage Fee</b>
\$30,000,000 - \$35,000,000	2.39%
\$35,000,000 - \$40,000,000	2.36%
\$40,000,000 - \$50,000,000	2.33%
\$50,000,000 - \$60,000,000	2.30%
\$60,000,000 - \$70,000,000	2.27%
>\$70,000,000	2.24%

Example. If the System processes work orders as follows:

Year 2: \$21,000,000 ordered through the System  
Year 3: \$21,000,000 ordered through the System  
Year 4: \$12,000,000 ordered through the System  
Year 5: \$15,000,000 ordered through the System

Provider will invoice County following total amounts for each year:

Year 2: \$520,800 (2.48% set fee for Year 2 x \$21,000,000 volume in Year 2)  
Year 3: \$514,500 (2.45% fee for Year 3 based on Year 2 volume x \$21,000,000 volume in Year 3)  
Year 4: \$294,000 (2.45% fee for Year 4 based on Year 3 volume x \$12,000,000 volume in Year 4)  
Year 5: \$385,500 (2.57% fee for Year 5 based on Year 4 volume x \$15,000,000 volume in Year 5)

#### **Travel and Optional Services**

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

County may request that Provider perform services reasonably related to the System (such services are deemed "Optional Services"). For all Optional Services, the Parties will agree in writing to the cost and scope of work to be performed.

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

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

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

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

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

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

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

**Records and Reports.** Provider will maintain records of its Support and Maintenance Services, and provide County with online access to an Event ticketing system, which shall include at least the following:

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

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

**Failure to Meet Required Response Times.** If Provider fails to meet the Required Response Times, County may offset against any sums due Provider \$200.00 for each hour that Provider's average response time in the preceding month exceeds the Required Response Times, which the Parties agree is a fair and reasonable approximation of County's negative financial impact caused by the

delay in Provider's response. To the extent that Provider provides documentation indicating Provider began working on an Event prior to County's notification, County will waive the credit for Failure to Meet Required Response Times.

**DownTime Maintenance Credit.** If a Severe or Critical Event is not resolved or reduced to Minor or Minimal priority level within four (4) business hours after notice to Provider during any calendar month, Provider will refund to County the lesser of five percent (5%) of the monthly fee or \$2,500, applicable to such calendar month. Such refunds will be paid within 15 days or, at County's option, may be credited against future sums due to Provider. This refund shall be in addition to any other remedy that is available in the event of a breach of the Agreement.

## **Exhibit D - Service Level Agreement**

In connection with all Services provided to County under the Agreement, Provider shall, at no additional cost to County, meet or exceed the requirements set forth in this Service Level Agreement ("SLA") for the duration of the Agreement. The standards set forth herein are intended to reflect the current industry best practices for the Application Service Provider ("ASP") hosting or Software as a Service ("SaaS") solution provided under this Agreement. If and to the extent industry best practices evolve to impose higher standards than set forth herein, SLA shall be deemed to impose the new, higher standards upon Provider. Provider shall promptly notify County in writing of any material change to its compliance with these standards. Any approval by County under this SLA may be approved in writing by the Contract Administrator or the Director of County's Division of Enterprise Technology Services ("ETS").

### **1. Definitions**

1.1. "Provider Platform" means to the ASP or SaaS solution that constitutes the Services to the County, or otherwise stores, hosts, or transmits County Data. Provider shall maintain the same standards set forth herein for all of its data centers and facilities that store or host County data.

1.2. "County Data" means the data and information provided by County or its agents under this Agreement and all results derived therefrom through the use of the Provider's services, whether or not electronically retained and regardless of the retention media.

1.3. Any other capitalized terms not defined herein refer to those defined terms in the Agreement.

### **2. Security**

#### **2.1. General**

2.1.1. Provider will ensure that County has the ability to authenticate all access by username/password or two-factor authentication.

2.1.2. Provider shall ensure that separation of duties and least privilege are enforced for privileged or administrative access to County's data and the Provider Platform.

2.1.3. Provider's procedures for the following must be documented and approved by County prior to the award of the first JOC contract by the County:

- 2.1.3.1. Evaluating security alerts and vulnerabilities;
- 2.1.3.2. Installing security patches and service packs;
- 2.1.3.3. Intrusion detection, incident response, and incident escalation/investigation;

- 2.1.3.4. Access and authorization procedures and resetting access controls (e.g., password policy);
- 2.1.3.5. Risk analysis and assessment procedures;
- 2.1.3.6. User access and termination procedures;
- 2.1.3.7. Security log review;
- 2.1.3.8. Physical facility access controls; and
- 2.1.3.9. Change control procedures.

2.1.4. Provider shall ensure that its service providers, subconsultants, and any third parties performing any Services relating to this Agreement shall comply with all terms and conditions specified in this SLA unless County, in writing, excuses specific compliance with any such term or condition. Provider shall provide County with a list of any such service providers, subconsultants or other third-parties on an annual basis, upon County's request, and promptly upon a material change in the composition of such entities.

2.1.5. If new or unanticipated threats or hazards to the Provider Platform are discovered by either County or Provider, or if existing safeguards have ceased to function, the discovering party shall immediately bring the situation to the attention of the other party.

2.1.6. Provider must mitigate critical or high risk vulnerabilities to the Provider Platform as defined by Common Vulnerability and Exposures (CVE) scoring system within 30 days of patch release. If Provider is unable to apply a patch to remedy the vulnerability, Provider must notify County of proposed mitigation steps to be taken and timeline for resolution.

## **2.2. Controls**

Provider shall maintain industry best practices for data privacy, security, and recovery measures including, but not limited to, disaster recovery programs, physical facilities security, server firewalls, virus scanning software, current security patches, user authentication, and intrusion detection and prevention. Unless otherwise provided in this SLA, upon request by County, Provider shall provide documentation of such procedures and practices to County.

## **2.3. Network Architecture/Security**

2.3.1. The Provider Platform shall be protected behind a layer of firewalls, the initial configuration diagram of which must be approved by County prior to Final Acceptance. Any subsequent changes to the configuration diagram must be promptly sent to County. Provider shall ensure that all database servers are protected behind a second set of internal firewalls.

2.3.2. Provider shall submit a network architecture diagram of County's stored and transmitted data, including the location of data center and details of connectivity from all

third parties who have access to County's data.

2.3.3. Provider shall protect any Internet interfaces or web services provided under this Agreement using a security certificate from a certification authority ("CA") that meets or exceeds the CA/Browser Forum's latest Secure Sockets Layer ("SSL") baseline requirements and network and certificate systems security requirements.

2.3.4. Provider shall restrict inbound and outbound traffic to County Data to "deny all, permit by exception" configuration.

2.3.5. Provider will support encryption using at a minimum Advanced Encryption Standard 256-bit encryption keys ("AES-256") or current industry security standards (whichever is higher) for the connection to the Provider Platform.

2.3.6. Provider's wireless networks connected to the Provider Platform shall be configured at a minimum using Wi-Fi Protected Access 2 (WPA2)-Enterprise, Advanced Encryption Standard (AES), and Protected Extensible Authentication Protocol (PEAP), current industry security standards (or whichever is higher) to secure and protect County data.

## **2.4. Physical Architecture/Security**

2.4.1. Provider shall ensure the facilities that house the network infrastructure for the Provider Platform are physically secure against threats such as unauthorized access and natural and environmental hazards, and entry controls are in place to limit and monitor physical access to the Provider Platform.

2.4.2. Provider shall connect its hosting site for the Provider Platform through at least two (2) independent Internet Service Providers ("ISPs") with different Internet points of presence.

2.4.3. Provider shall ensure adequate background checks have been performed on any personnel having access to County data. To the extent permitted by such checks, Provider shall not knowingly allow convicted felons or other persons deemed by Provider to be a security risk to access County data. Provider shall provide privacy and information security training to its employees upon hire and at least once annually.

## **2.5. Disaster Recovery**

2.5.1. Provider shall maintain a disaster recovery plan for the Provider Platform with mirrored sites geographically separated by at least 250 miles, with a Recovery Time Objective ("RTO") of a maximum of twelve (12) hours and a Recovery Point Objective ("RPO") of a maximum of four (4) hours from the incident.

2.5.2. Provider shall conduct a disaster recovery test of Provider's hosted or SaaS system that comprises the Provider Platform under this Agreement on at least an annual basis, and shall notify County at least ten (10) days in advance of each such test. In addition, Provider shall conduct a disaster recovery test specific to the County, including County's data and utilization of the Provider Platform and County's network and data, in coordination with County at least once per year; the timing and duration of the County-specific test is subject to the approval of County.

## **2.6. Incident Response**

2.6.1. If any unauthorized party is successful in accessing any information technology component related to the Provider Platform, including but not limited to servers or fail-over servers where County's data or files exist or are housed, Provider shall report to County within twenty-four (24) hours of becoming aware of such breach. Provider shall provide County with a detailed incident report within five (5) days of the breach, including remedial measures instituted and any law enforcement involvement. Provider shall fully cooperate with County on incident response, forensics, and investigations that involve the Provider's infrastructure relating to any County data or County applications. Provider shall not release County data or copies of County data without the advance written consent of County.

2.6.2. Provider shall provide County with the names and contact information for a security point of contact and a backup security point of contact to assist County with security incidents prior to the Effective Date of this Agreement.

## **2.7. County Data**

2.7.1. County Data will be logically separated from other client data. The Provider shall prohibit the use of unencrypted protocols such as FTP, SMTP, and Telnet for County Data.

2.7.2. Any County Data must be available to County upon request within one (1) business day, in any format reasonably requested by County, including, without limitation, Extensible Markup Language ("XML") and Structured Query Language ("SQL"), or in another format as may be mutually agreed to by County and Provider.

2.7.3. Upon termination or expiration of this Agreement or end of serviceable life of any media used in connection with this Agreement, and upon written notification from County that the applicable County Data is currently maintained by County or otherwise securely stored, Provider shall, at County's option, (a) securely destroy all media (including media used for backups) containing any County Data on all decommissioned hard drives or storage media to National Institute of Standards and Technology ("NIST") standards and provide to County a signed certificate of destruction within ten (10) business days, or (b) return to County all County Data and provide a signed certification within two (2) business days documenting that no County Data is retained by Provider in



any format or media.

2.7.4. County Data is the property solely of County and may not be reproduced or used by Provider without the prior written consent of County. Provider and its subcontractors will not publish, transmit, release, sell, or disclose any County Data to any third party without County's prior written consent. Provider may use the County Data, when aggregated with other customer data and anonymized, for internal business purposes related to the maintenance and improvement of Provider's Services.

2.7.5. County shall have the right to use the Services to provide public access to County Data as County deems appropriate or as otherwise required by law.

2.7.6. In the event of any impermissible disclosure, loss or destruction of County Data relating to any action or omission of Provider, Provider must immediately notify County, take all reasonable and necessary steps to mitigate any potential harm, further disclosure, loss, or destruction.

### **3. Compliance**

3.1. Provider shall cooperate and provide any information requested by County relating to compliance and regulatory requirements. A request for information or review by County may include, but is not limited to, the following:

3.1.1. Vulnerability scans of authenticated and unauthenticated operating systems/networks, web applications, and database applications;

3.1.2. Automated scans and penetration ("Pen") tests performed by County personnel or agents designated by County;

3.1.3. Review of requested documents, including without limitation, Provider's architecture documents, external audits of Provider's information security policies and procedures, Pen- test documentation, security incident reports, environment logs, virtual private network ("VPN") access logs to terminal services, network traffic and firewall activity logs, Intrusion Detection System ("IDS") attack alerts and anomalies, enterprise password management activity, server and application logs, and monthly or periodic network traffic and firewall activity logs; and

3.1.4. Physical inspection of Provider's facilities by County or its representatives.

3.2. Provider shall provide County with the ability to generate account reports consisting of the account holder's name and application access rights.

3.3. Provider shall provide County with the ability to generate account management reports showing new users, access rights changes, and account termination with the

associated time stamp information.

3.4. Provider shall provide County with the ability to generate time-stamped user and administrator access (login/logout) and a list of activities performed by administrators, privileged users, or third party contractors while using the System.

3.5. Upon request by County, Provider shall promptly provide County with access to time-stamped data transfer logs (including the account, a description of the data transferred and its size, and the user and account names for forensic purposes), time-stamped application and platform environment change control logs, and time-stamped data backup logs indicating the backup type (e.g., full, incremental, etc.).

3.6. Upon County's request, Provider shall make available to the County proof of Provider's compliance with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing under this Agreement.

#### **4. Service Availability**

##### **4.1. System Availability**

4.1.1. Provider guarantees that the Network Uptime (as defined herein) will be 99.00% for any 24 hour period, excluding Scheduled Maintenance as defined herein (collectively, the "Network Uptime Guarantee"). Network Uptime is the time that the System and Services are functioning optimally and fully operational, and requires proper functioning of all network infrastructure, including routers, switches, and cabling, affecting a user's ability to reliably transmit or receive data; Network Downtime is the remainder of time that is not included in Network Uptime, and is measured from the time the trouble ticket is opened to the time the network is fully restored. As long as the System is available over the Internet to at least two other comparable non-County customers (i.e., the System is functioning properly and there are no technical issues with Provider or the Provider Platform), any inability on the part of County to access the System as a result of a general Internet outage will not be counted toward Network Downtime. System unavailability for the purpose of building redundancy or other recovery systems that is approved by County in advance shall not be charged as downtime in computing the Network Downtime. System unavailability due to Provider's equipment failure constitutes Network Downtime.

4.1.2. Provider will refund to County the lesser of five percent (5%) of the monthly fees (or monthly pro rata equivalent, if recurring fees under the Agreement are charged other than monthly), or \$2,500, under the Agreement in the event the Network Downtime exceeds that permitted under the Network Uptime Guarantee during any calendar month. Such refunds will be paid within ten (10) days of the applicable monthly report or, at County's option, may be credited against amounts due under any unpaid invoice or future invoice.

4.1.3. Prime Time is defined as County business days from 7 a.m. to 7 p.m. Normal availability of the System shall be twenty-four (24) hours per day, seven (7) days per week. Planned downtime (i.e., taking the System offline such that it is not accessible to County) ("Scheduled Maintenance") shall occur during non-Prime Time and with at least five (5) business days' advance written notice to County, or in accordance with already established maintenance schedule. Provider may conduct unscheduled maintenance with at least twenty-four (24) hours advance notice except in case of an emergency, in the event an unscheduled fix is required. During non-Prime Time, Provider may perform routine maintenance operations that do not require the System to be taken offline but may have immaterial effects on System performance and response time without any notice to County. Such degradation in performance and response time shall not be deemed Network Downtime. Any unscheduled maintenance that is expected to take place during Prime Time requires written approval from the Contract Administrator.

4.1.4. Upon request, but not more than once for any month, Provider shall provide to County a report detailing Provider's performance under this SLA for the prior calendar month. To the extent the performance fails to meet the Network Uptime Guarantee, the report shall calculate: the total number of minutes of uptime for each of Prime Time and non-Prime Time; the total number of minutes for each of Prime Time and non-Prime Time minus any applicable Scheduled Maintenance, respectively; and the percentage of uptime versus total time minus Scheduled Maintenance for each (e.g., monthly minutes of non-Prime Time network uptime / (Total minutes of non-Prime Time – Minutes of Scheduled Maintenance) = %).

4.1.5. Provider guarantees the functioning of all equipment components necessary for Provider to provide the Services, the Provider Platform, and meet System availability requirements stated in this SLA.

## 4.2. Infrastructure Management

4.2.1. During Prime Time, Provider shall ensure packet loss of less than one percent (1%) and less than sixty (60) milliseconds domestic latency within the Provider Platform. Provider shall maintain sufficient bandwidth to the Provider Platform and ensure the server processing time (or CPU processing capacity) to provide millisecond response times from the server. County and Provider recognize that end user response times are dependent on intermittent ISP network connectivity, and in the case of County's users, dependent on County's internal network health.

4.2.2. To the extent the Provider Platform provides or supports public access to users in Broward County or through the County's web pages, Provider's Services shall support up to 500,000 site hits per calendar day and capture the number of site hits by page for performance to standards reporting.

4.2.3. Provider shall ensure that an unlimited number of transactions may be

processed to County production database. Subject to County approval, Provider may recommend that non-routine reports and queries be limited to certain timeframes, quantities or other specifications if Provider determines that such reports and queries cause degradation to response times affecting performance levels established in this SLA.

4.2.4. Provider will retain all database records regardless of number or size.

4.2.5. Provider shall routinely apply upgrades, new releases, and enhancements to the Provider Platform as they become available after prior, written approval by the County and shall ensure that these changes will not adversely affect the Provider Platform.

4.2.6. Provider agrees to support an unlimited number of queries and reports against County's Data. County agrees that Provider may put reasonable size limits on queries and reports to maintain System performance, provided such limits do not materially impact County's regular business operations.

4.2.7. Provider shall conduct full, encrypted System backups (including System and user data) weekly and shall conduct incremental, encrypted backups daily. Encrypted backups will be written to a backup device with sufficient capacity to handle the data. Provider shall maintain a complete current set of encrypted backups for County's System, including County Data, at a remote, off-site "hardened" facility from which data can be retrieved within one (1) business day at any point in time. Full System restoration performed as a recovery procedure after a natural disaster is included as part of Provider's required Services under this Agreement. Upon County's request, Provider shall also provide restoration of individual file(s).

#### 4.3. **Performance Monitoring and Hosting Capacity Increases**

If requested by County, Provider shall provide standard reporting metrics of the Provider Platform to County on a monthly basis which shall include: traffic patterns by user and by time; server load, including central processing unit load, virtual memory, disk and input/output channel utilization; transmission control protocol load for each server allocated in part or in full to County System; and system errors in System, database, operating system, and each server allocated in part or in full to System.

### 5. **Transition/Disentanglement**

5.1. Provider will complete the transition of any terminated Services to County and any replacement providers that County designates (collectively, the "Transferee"), without causing any unnecessary interruption of, or adverse impact on, the Services ("Disentanglement"). Provider will work in good faith (including, upon request, with the

Transferee) at no additional cost to County to develop an orderly Disentanglement plan that documents the tasks required to accomplish an orderly transition with minimal business interruption or expense for County. Upon request by County, Provider shall cooperate, take any necessary additional action, and perform such additional tasks that County may reasonably request to ensure timely and orderly Disentanglement, which shall be provided at the rate(s) specified in the Agreement or, if no applicable rate is specified, at a reasonable additional fee upon written approval by the County. Specifically, and without limiting the foregoing, Provider shall:

5.1.1. Promptly provide the Transferee with all nonproprietary information needed to perform the Disentanglement, including, without limitation, data conversions, interface specifications, data about related professional services, and complete documentation of all relevant software and equipment configurations;

5.1.2. Promptly and orderly conclude all work in progress or provide documentation of work in progress to Transferee, as County may direct;

5.1.3. Not, without County's prior written consent, transfer, reassign or otherwise redeploy any of Provider's personnel during the Disentanglement period from performing Provider's obligations under this Agreement;

5.1.4. If applicable, with reasonable prior written notice to County, remove its assets and equipment from County facilities;

5.1.5. If County requests, and to the extent permitted under the applicable agreements, assign to the Transferee (or use its best efforts to obtain consent to such assignment where required) all contracts including third-party licenses and maintenance and support agreements, used by Provider exclusively in connection with the Services. Provider shall perform all of its obligations under such contracts at all times prior to the date of assignment, and Provider shall reimburse County for any losses resulting from any failure to perform any such obligations;

5.1.6. Deliver to Transferee all current, nonproprietary documentation and data related to County-owned assets and infrastructure. After confirming in writing with County that the applicable County data is received intact or otherwise securely stored by County, Provider shall securely erase all County Data, including on any hard drives and backup media, in accordance with NIST standards. Upon written consent from County, Provider may retain one copy of documentation to the extent required for Provider's archival purposes or warranty support; and

## **6. Managed Services/Professional Services (IT)/Third-Party Vendors**

6.1. Provider must, for all Provider's employees who performed Services to County

under the Agreement or who had access to County Data, and who are no longer employed by Provider, promptly disable such employees' access to County Data.

6.2. Provider shall ensure all Provider's employees with access to County environment have signed County's Information Resources User Acknowledgement form prior to accessing County network environment.

6.3. Provider shall provide privacy and information security training to its employees with access to the County environment upon hire and at least annually. (PCI 12.6.1)

Exhibit E – Minimum Insurance Requirements

TYPE OF INSURANCE	ADDL INSD	SUBR WVD	MINIMUM LIABILITY LIMITS		
				Each Occurrence	Aggregate
<b>GENERAL LIABILITY - Broad form</b> <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Premises-Operations <input type="checkbox"/> XCU Explosion/Collapse/Underground <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury Per Occurrence or Claims-Made: <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made Gen'l Aggregate Limit Applies per: <input type="checkbox"/> Project <input type="checkbox"/> Policy <input type="checkbox"/> Loc. <input type="checkbox"/> Other _____	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Bodily Injury		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$1,000,000	\$2,000,000
			Personal Injury		
			Products & Completed Operations		
<b>AUTO LIABILITY</b> <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Any Auto, If applicable Note: May be waived (if no driving will be done in performance of services/project).	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Bodily Injury (each person)		
			Bodily Injury (each accident)		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$1,000,000	
<input type="checkbox"/> <b>EXCESS LIABILITY / UMBRELLA</b> Per Occurrence or Claims-Made: <input type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made Note: May be used to supplement minimum liability coverage requirements.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
<input checked="" type="checkbox"/> <b>WORKER'S COMPENSATION</b> Note: U.S. Longshoremen & Harbor Workers' Act & Jones Act is required for any activities on or about navigable water.	N/A	<input checked="" type="checkbox"/>	Each Accident	STATUTORY LIMITS	
<input checked="" type="checkbox"/> <b>EMPLOYER'S LIABILITY</b>			Each Accident	\$1,000,000	
<input checked="" type="checkbox"/> <b>PROFESSIONAL LIABILITY (ERRORS &amp; OMISSIONS)</b>	N/A	<input checked="" type="checkbox"/>	If claims-made form:	\$1,000,000	
			Extended Reporting Period of:	2 years	
			*Maximum Deductible:	\$10 k	
<input type="checkbox"/> Installation floater is required if Builder's Risk or Property are not carried. Note: Coverage must be "All Risk", Completed Value.			*Maximum Deductible (Wind and/or Flood):	Not to exceed 5% of completed value	Completed Value
			*Maximum Deductible:	\$10 k	
Description of Operations: "Broward County" shall be listed as Certificate Holder and endorsed as an additional insured for liability. Policies shall be endorsed to provide 30 days written notice of cancellation to Certificate Holder, 10 days' notice of cancellation for non-payment. Contractors insurance shall provide primary coverage and shall not require contribution from Certificate Holder. *Contractor is responsible for all Deductibles.					

**CERTIFICATE HOLDER:**  
 Broward County  
 115 South Andrews Avenue  
 Fort Lauderdale, Florida 33301

Digitally signed by  
 [Signature]  
 DN:  
 cn=ricard@trms  
 rsidmg  
 Date: 2018.02.26  
 12:45:06 -0500

Risk Management Division

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

Contract Number: \_\_\_\_\_  
Work Authorization No. \_\_\_\_\_

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

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

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

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

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

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

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

**County**

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

**Provider**

	Signed	Date
Attest	Typed Name	
	Title	