AMENDMENT
to ISM Schedule #1 PerfMan for OS/390 Management Suite Option Schedule to the ISM Software and Services Agreement
Dated December 31, 2001
between Miami Dade County and the Information Systems Manager, Inc. (ISM)

Agreement: SOFTWARE & SERVICES AGREEMENT REV. VERSION OF 12/31/01

Contract Title: Amendment to ISM Schedule #1 PerfMan for OS/390 Management Suite Option Schedule to the ISM Software and Services Agreement ("Amendment")

Licensor: The Information Systems Manager, Inc. (ISM)
One Bethlehem Plaza
Bethlehem, PA 18018-5784

In accordance with the above referenced Amendment, this Amendment when properly executed constitutes authorization to proceed with the following modifications:

Maintenance Services Fees and Payment

The compensation for all Maintenance Services performed under this Amendment, including all costs associated, shall be billed in accordance with the rates set forth below.

Term	PerfMan for z/OS (formerly referred to as PerfMan for OS/390) 882 MIPS	UNIX with Modeling 70 Managed Systems	TOTAL
01/01/2008 thru 12/31/2008	$16,000.00	$13,050.00	$29,050.00
01/01/2009 thru 12/31/2009	$16,000.00	$13,050.00	$29,050.00
01/01/2010 thru 12/31/2010	$16,000.00	$13,050.00	$29,050.00

MAINTENANCE TERM

The Licensor shall provide Maintenance Services for the Products previously licensed to the County as specified above, which includes enhancements, error corrections and related documentation, all where technically feasible, through December 31, 2010 at the fees for license use as specified above. If an existing CPU is upgraded, or an additional CPU that is managed by an ISM Product is installed, Client is required to contact ISM in writing within fifteen (15) days after the upgrade. Additional License and Maintenance Services fees may be due. Increased Maintenance Services fees for the upgraded Site will take effect and will be due and payable the month following the upgrade.

After December 31, 2010, the County, at its sole discretion, reserves the right to exercise the option to renew this Amendment for a period of seven (7) additional one-year periods. The County will provide notice to Licensor of its intent to renew the Amendment ninety (90) calendar days prior to the end of the initial three year (3) year term and any renewals thereof. Maintenance Services fees for subsequent renewal terms will be invoiced by the Licensor on each anniversary date at an annual term fee not to exceed five (5 %) percent of the prior year's Maintenance Services fees, adjusted for any product license upgrade growth.

The County's obligation as defined herein to pay any amounts due for any subsequent fiscal year is contingent upon the appropriation and approval of funds for that purpose. If sufficient funds as determined by the user agency are not appropriated to provide for continuation of a contract or order, the contract or order shall terminate on the first date in any fiscal year on which sufficient funds are no longer available. The County will attempt to provide 30 days or as much notice as possible of an appropriation problem.

COUNTY USER ACCESS PROGRAM (UAP)

User Access Fee - Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Amendment is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Amendment, or any contract resulting from this solicitation and the utilization of the County contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Licensor providing goods or services under this Amendment shall invoice the contract price and shall accept as payment thereof the contract price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Vendor participation in this invoice reduction portion of the UAP is mandatory.

Joint Purchase - Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Licensor must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Licensor participation in this joint purchase portion of the UAP, however, is voluntary. The Licensor shall notify the ordering entity, in writing, within 3 work days of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Licensor shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

The County shall have no liability to the Licensor for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Licensor and shall be paid by the ordering entity less the 2% UAP.

All terms, covenants and conditions of the original ISM Software and Services Agreement and ISM Schedule #1 thereto ("Agreement") shall remain in full force and effect, except to the extent herein amended. In the event that there is a conflict between or among the provisions of the Agreement and this Amendment, this Amendment takes precedence.

Licensor
By: Christine Belshaw
Name: Christine Belshaw
Title: Administration Manager
Date: 1/29/08
Attest: Tammie L Caruso

Corporate Seal or Notary Seal

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Tammie L. Caruso, Notary Public
City of Bethlehem, Northampton County
My Commission Expires June 11, 2009

Miami-Dade County
By:
Name: Amos Roundtree for Miriam Singer
Title: Division Director
Date: 1/31/08
Attest:
Clerk of the Board

Approved as to form
and legal sufficiency
Assistant County Attorney

ISM Schedule # 1

PerfMan® for OS/390® Management Suite Option

Schedule to the ISM Software and Services Agreement

Product: *PerfMan* for OS/390 Management Suite Option includes the following:

OS/390 Summarization Software, OS/390 Cache Summarization Software
ISM PC-based Software modules:

PerfMan Analyst	Briefing Book
OS/390 Performance Management	Correlation Analysis
OS/390 Capacity Planning	OS/390 Advanced DASD Management
OS/390 Advanced Workload Management	OS/390 DASD Cache Analysis

Client agrees to pay ISM $52,500 for a license to use PerfMan for OS/390 Management Suite Option, payable in a one-time, nonrefundable payment, to be invoiced upon execution of this Agreement.

ISM will provide Maintenance Services including enhancements, error corrections and related documentation, all where technically feasible, for the first twelve (12) months of this Agreement at no additional charge.

Client agrees to purchase additional Maintenance Services, extending the maintenance period for twenty-four (24) months beyond the initial twelve (12) month period, at a cost of $10,500 per year ($21,000 total). Client will be invoiced annually by ISM on each anniversary date of this Agreement for these additional Maintenance Services. Client's obligation under this Agreement to pay $10,500 per year for additional Maintenance Services for both year two and year three is contingent upon the appropriation and approval of funds by Client for such purpose. Subsequent Maintenance Services will be invoiced by ISM on each anniversary date thereafter, based upon a fee of twenty (20%) percent of the then-current list of License fees.

OS/390 Summarization Software and OS/390 Cache Summarization Software is licensed by Site. A "Site" is defined as one or more CPUs where the CPUs function under common I/S operations supervision and are contained within Client's Enterprise. Classification is given to each site based on ISM's assigned processing size for each CPU.

The Client is authorized to use Product in this Schedule within a Site of no greater than 800 MIPS.

The processors installed at the Site are as follows:
9672-RC6

The Site address is as follows:
Miami-Dade County, Florida

5680 S.W. 87th Avenue

Miami, FL 33173

ISM PC-based Software modules in this Schedule are licensed for installation and use solely within the Client's Enterprise and shall be used exclusively to analyze data from Client's equipment that has been properly licensed within this Schedule.

This Product is licensed to Client on a permanent basis.

If an existing CPU is upgraded, or an additional CPU that is managed by an ISM Product is installed, the Client is required to contact ISM in writing within fifteen (15) days after the upgrade. Additional License and Maintenance Fees may be due. The upgrade fee, when due, will not exceed the then-prevailing difference between the list License Fee applicable to the authorized Site, and the list License Fee applicable to the upgraded Site. Increased maintenance fees for the upgraded Site will take effect and will be due and payable the month following the upgrade.

At no additional cost to Client, ISM agrees to provide a two month continuation of PerfMan Services for OS/390, which includes processing at ISM's facility of data for October 2001 and November 2001, for the purposes of providing monthly reports and database updates for five (5) OS/390 images.

The ISM Software and Services Agreement dated December 31, 2001between Client and ISM is accepted by the parties and made a part of this Schedule. The Client and ISM agree to the terms of this Schedule by their signatures below.

ISM		CLIENT	
By:	Peter Weilnau	By:	
	Peter Weilnau		Tony Arroyo
Title:	COO	Title:	Director Bid & Loo
Date:	12-10-01	Date:	April 01, 2002

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The Information Systems Manager, Inc. (ISM™)
Software and Services Agreement

This Agreement dated December 31, 2001 is made between The Information Systems Manager, Inc. (ISM), a Pennsylvania USA Corporation, with offices at One Bethlehem Plaza, Bethlehem, PA USA 18018-5784, and the following Client:

Client Name: Miami-Dade County, Florida

Client Address: 111 N.W. 1st Street

Miami, FL 33128

Client's Enterprise, as used in Schedules to this Agreement, is defined as all business locations of the Client. Client's Enterprise specifically excludes subsidiaries and affiliates of Client unless otherwise agreed to herein.

ISM Products are licensed for installation and use solely within the Client's Enterprise and shall be used exclusively to analyze data from Client's equipment that has been licensed by the properly executed ISM Schedules. The Master License Terms and Conditions, and all executed ISM Schedules are accepted by the parties and made a part of this Agreement.

Fees and Payment. In consideration of the license granted by ISM to the Client, the Client will comply with the terms of the license and will pay applicable license and/or maintenance fees. Payment will be made within thirty (30) days of the date of the invoice. All amounts are in US dollars. All invoices will be paid in US dollars. Unless a sales tax-exemption certificate is provided, ISM will invoice Clients at the applicable state sales tax rate when Product is shipped to and used within the states of California, Florida, Georgia, New Jersey, Pennsylvania and Virginia. All Clients shall be responsible for the payment of any other local, state or federal use, sales, excise, personal property or other similar taxes, tariffs or duties.

Each License and Service herein shall be automatically renewed for the same period, upon payment of ISM's invoice for the subsequent term, unless terminated by the Client or ISM. Subsequent terms will be invoiced at the then-current rate, and Client will receive ninety (90) days written notice of changed fees.

THE CLIENT, BY ITS DULY EMPOWERED AGENT, ACKNOWLEDGES THAT THEY HAVE READ THIS AGREEMENT, MADE INFORMED SELECTIONS WHERE APPROPRIATE, AND UNDERSTAND AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

ISM By:	Peter Weilnau	**CLIENT** By:	
	Peter Weilnau		TONY ARGUYO
Title:	COO	Title:	DIRECTOR, B&T CONTRACTS
Date:	12-10-01	Date:	APRIL 01, 2002

"AMENDMENT TO THE INFORMATION SYSTEMS MANAGER, INC SOFTWARE AND SERVICES AGREEMENT" between Miami-Dade County, Florida ("Client") and The Information Systems Manager, Inc. ("ISM"). ISM and Client hereby agree that The Information Systems Manger, Inc. Software and Services Agreement is hereby modified as follows:

RIDER 1

Section titled "Fees and Payment" is hereby modified to read as follows:

"In consideration of the license granted by ISM to the Client, the Client will comply with the terms of the license and will pay applicable license and/or maintenance fees. Payment will be made within forty-five (45) days of receipt of invoice. All amounts are in US dollars and all invoices will be paid in US dollars. ISM understands that Client is exempt from sales and compensating use taxes on all personal property it purchases or uses; thus, ISM shall not include any charges representing such taxes on any invoices hereunder, and taxes shall not apply unless Client loses such exemption.

Each License and Service herein shall be automatically renewed for the same period, upon payment of ISM's invoice for the subsequent term, unless terminated by the Client or ISM. Subsequent terms will be invoiced at the then-current rate and Client will receive ninety (90) days written notice of changed fees.

For the purposes of this Amendment, ISM agrees that in the event Client elects to upgrade its present CPU configuration to a class of processor greater than 800 MIPS but not more than 1200 MIPS, that the upgrade fee for the licensed software shall not exceed the sum of sixteen thousand dollars ($16,000.00)."

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IN WITNESS WHEREOFF; the parties have caused this Amendment to be executed by their duly authorized representatives.

ACCEPTED:

THE INFORMATION SYSTEMS MANAGER, INC.	MIAMI-DADE COUNTY, FLORIDA
By: [signature]	[signature]
(Authorized Signature)	(Authorized Signature)
Peter Weilnau	Tony Arroyo
(Print or Type Name)	(Print or Type Name)
COO	Director, Bid & Cont
(Title)	(Title)
12-10-01	April 01, 2002.
(Date)	(Date)

Approved as to form and legal sufficiency

Assistant County Attorney

ISM LICENSE
ISM grants to Client and Client accepts, subject to the terms and conditions of this Agreement, a non-exclusive and non-transferable license to install and use, on Client's designated computer equipment, and solely for Client's internal operation, the object computer programs and related documentation supplied to Client ("Products"). The Products licensed herein are identified in executed ISM Schedules to this Agreement. The Master License Terms and Conditions apply to the licensed Products and all future modifications, enhancements or upgrades of the Products that the Client may acquire from ISM whether purchased or otherwise.

Upon termination of this Agreement, Client agrees to return Products or to destroy Products, including all copies made of the software, and certify to ISM that all software provided under this Agreement and all copies were returned or destroyed within ten (10) days of the termination date.

CONFIDENTIALITY AND PROPERTY RIGHTS
ISM is the sole owner of all rights to Products, including patents, copyrights, trade secrets and other proprietary information or trademarks and any other intellectual property rights. Client agrees and recognizes that Products, together with any other data and materials supplied by ISM pursuant to this Agreement, are the property of ISM and remain so even after delivery to Client. Client shall have no right, title or interest therein, except as expressly set forth in this Agreement.

Products shall only be used by the Client to process its own data and shall not be used for or on behalf of others. Client shall not directly or indirectly (a) make copies, except for archival purposes; (b) create or attempt to create the source computer code or any part thereof from the operational object code licensed under this Agreement; (c) change or modify Products or create derivative works from it; or (d) reverse engineer or attempt to reverse engineer Products. Client agrees to monitor and control the use and disclosure of Products. Client shall notify ISM of the unauthorized possession or use of Products. All terms of the first two paragraphs of this Confidentiality and Property Rights Section shall survive the termination of this Agreement for a period of two years from the date of termination. This Agreement may be terminated by ISM without prior notice should Client violate any of the terms of this section.

All Client input data or other data relating to the Client's business which is submitted to ISM pursuant to this Agreement, and resulting information prepared by ISM, will be kept confidential by ISM. If, however, the Client has purchased the Products licensed herein from an ISM authorized reseller, Client agrees that such information may be accessed by the authorized reseller.

WARRANTY OF PERFORMANCE
ISM warrants that each Product shall perform substantially in accordance with the then-current operating documentation for the Product for the initial warranty period as defined in the Product Schedule, and any additional periods where Maintenance Services have been purchased.

Client represents that it accepts sole responsibility for use of the Products and the results obtained from it.

EXCEPT FOR THE WARRANTIES PROVIDED IN THIS AGREEMENT, ALL WARRANTIES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THE STATUTORY WARRANTY OF NON-INFRINGEMENT, ARE HEREBY EXCLUDED AND DISCLAIMED.

REMEDIES
ISM's entire liability and Client's exclusive remedy under the terms and conditions of this Agreement shall be, at ISM's option, either the repair or replacement of defective software or the return of the license fee and termination of the Agreement.

EXCEPT FOR CLAIMS OF PERSONAL INJURY TO THE EXTENT APPLICABLE LAW REQUIRES SUCH LIABILITY, UNDER NO CIRCUMSTANCES WILL ISM BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOSS OF RECORDS OR DATA, WHETHER IN AN ACTION BASED ON CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE) EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORSEEN.

TRADEMARKS AND REGISTERED TRADEMARKS
Schedules to this Agreement may contain trademark or registered trademark indications for the following:

Perfmon is a registered trademark of The Information Systems Manager, Inc. in the United States and/or other countries.
ISM is a trademark of The Information Systems Manager, Inc. in the United States and/or other countries.
Windows NT is a registered trademark of Microsoft Corporation in the United States and/or other countries.
UNIX is a registered trademark of X/Open Company Limited in the United States and/or other countries.
CICS, DB2, MVS, and OS/390 are either registered trademarks or trademarks of IBM Corporation in the United States and/or other countries.
HP and Measureware are either registered trademarks or trademarks of Hewlett-Packard Company in the United States and/or other countries.
BMC and Patrol are either registered trademarks or trademarks of BMC Software, Inc. in the United States and/or other countries.

GENERAL PROVISIONS
Client's rights under this Agreement shall not be assigned without the prior written approval of ISM.

This Agreement contains the *entire* agreement between ISM and Client, superseding all prior oral and written communications, discussions and negotiations, and may not be waived or modified except by written agreement of the parties.

This Agreement and the rights and obligations of parties hereunder shall be construed in accordance with and be governed by the Laws of the Commonwealth of Pennsylvania, United States of America if the Software was acquired in the United States or Canada. If the Software was acquired outside of the United States or Canada, then any dispute that cannot be settled in good faith negotiations among the parties shall be submitted to Binding Arbitration in accordance with the World Intellectual Property Organization (WIPO) Expedited Arbitration Rules.

If any provisions of this Agreement shall be held illegal, void or unenforceable, the remaining portions shall remain in full force and effect.

"AMENDMENT TO THE INFORMATION SYSTEMS MANAGER, INC MASTER LICENSE TERMS AND CONDITIONS SCHEDULE A TO THE SOFTWARE AND SERVICES AGREEMENT" between Miami-Dade County, Florida ("Client") and The Information Systems Manager, Inc. ("ISM"). ISM and Client hereby agree that The Information Systems Manger, Inc. Master License Terms and Conditions Schedule A to the Software and Services Agreement is hereby modified as follows:

RIDER 1

Section titled "Remedies", is hereby modified by adding additional language which language shall read as follows:

"The foregoing notwithstanding, ISM shall be liable for and shall indemnify and hold Client harmless for all losses, cost and expense (including reasonable attorney fees) resulting from any and all claims of personal injury or wrongful death or damage to real property, or tangible personal property arising from the negligence or willful misconduct of ISM or its officials, agents, employees, subcontractors, or assigns in the performance of its rights and obligations under this Agreement. Client shall notify ISM of any claims or suits promptly and provide reasonable cooperation at ISM's expense and full authority to ISM to defend or settle the suit."

RIDER 2

Section titled "General Provisions", the third paragraph is hereby deleted and replaced with the following language:

"This Agreement and the rights and obligations of the parties hereunder shall be governed and construed in accordance with the laws of the State of Florida, without application of conflicts of law principles. The venue of any action on this Agreement shall be laid in Miami-Dade County, Florida, and any action to determine the rights or obligations of the parties hereto shall be brought in the Courts of the State of Florida."

(Balance of Page Left Blank Intentionally.)

IN WITNESS WHEREOFF; the parties have caused this Amendment to be executed by their duly authorized representatives.

ACCEPTED:

THE INFORMATION SYSTEMS MANAGER, INC.	**MIAMI-DADE COUNTY, FLORIDA**
By: _____	_____
(Authorized Signature)	**(Authorized Signature)**
Peter Weilnau	TONY ARZOYO
(Print or Type Name)	**(Print or Type Name)**
COO	Director, Bid Management
(Title)	**(Title)**
12-10-01	April 01, 2002
(Date)	**(Date)**

Approved as to form and legal sufficiency

_____

Assistant County Attorney