



City Manager's Office

CITY MANAGER

2015 APR 15 AM 10: 24

3 ✓ 4/29/15 ⊙

ITEMS FOR SIGNATURE/REVIEW

CMO LOG #: APR-45

TODAY'S DATE: 4/14/15

Assigned to: L. FELDMAN S. HAWTHORNE S. TORRIENTE

Title of Document for Signature: Jefferson University - Dabank
Cooperation

Memo/Doc # (if applicable): 15 0496 Am 10 Date of Doc.: 4/7/15

Document received from: Procurement Vote Summary: not available @ this time

- ^{Signed for Lee} APPROVED FOR LEE FELDMAN'S SIGNATURE
- PENDING APPROVAL (See comments below)
- N/A FOR L. FELDMAN TO SIGN

PER ASSISTANT CITY MANAGER:

S. HAWTHORNE _____ or S. TORRIENTE _____
(Initial and date above) (Initial and date above)

Rejection/Questions/Additional Information Request:

4/23

Please leave this routing form attached to these agreements so the Clerk's office

Comments/Tracking Information:

Knows who to retain them to.
Wendy - pls return (or call) these agreement(s) to me in Procurement. Thank you.
Elizabeth!!



DATALINK

Terms and Conditions of Sale (U.S.) – Product and Service

These Terms and Conditions relate to the sale of products and related services in the United States of America and apply to this quotation and, upon acceptance by the City of Fort Lauderdale, a Florida municipality, (the "Purchaser"), to the agreement between the parties. Any additional or differing terms or conditions proposed by Purchaser or included in Purchaser's acceptance of any quotation or Purchase Order shall not become part of the agreement between the parties and are hereby expressly rejected, unless Datalink Corporation, a Minnesota corporation authorized to transact business in Florida as Datalink Corporation of Minnesota, ("Datalink"), expressly agrees to such additional or differing terms in writing. No course of prior dealings between the parties and no usage of trade will be relevant to determine the meaning of these Terms and Conditions or any purchase order or invoice, or any document in electronic or written form. If you object to any Terms and Conditions stated herein, such objection must be in writing and must reach Datalink before performance has begun.

1. **PRICES.** Prices are exclusive of all sales, use and like taxes. Any tax Datalink may be required to collect or pay upon the sale, licensing or delivery of the products shall be paid by Purchaser to Datalink unless Purchaser provides direct payment authority or an exemption certificate valid in the State to which the product will be shipped. Datalink from time to time may provide installation services, maintenance services, management services, or consulting services (or any combination thereof) to Purchaser (the "Services"). Prices for Services include the fees for Services, but exclude all taxes; provided, however, that any applicable taxes shall be paid to Datalink in addition to service fees, in the event that Datalink is required to remit any taxes by any tax authorities.

2. **PRICE QUOTATIONS.** Unless otherwise agreed to in writing by Datalink, Datalink quotations shall be valid for thirty (30) days from the date of issuance and effective only for purchase orders accepted within that period. All prices quoted are valid only if Purchaser's requested delivery date (including any change orders) is within six (6) months of the date on which the original order is placed.

3. **PAYMENT AND SECURITY TERMS.** Payment terms are net forty-five (45) days from the date of Purchaser's receipt of Datalink's proper invoice. Should Purchaser become delinquent in the payment of any sum due Datalink, upon ten (10) days written notice, Datalink shall not be obligated to continue performance under any agreement with Purchaser. Datalink reserves the right to charge 1 interest in accordance with the Florida Local Government Prompt Payment Act on all invoices that remain unpaid forty-five (45) days from Purchaser's receipt of proper invoice.

4. **DELAYS IN PERFORMANCE.** Datalink shall not be liable for any delay or failure to perform resulting from circumstances which are beyond Datalink's reasonable control or which would cause Datalink to incur unreasonable expense in order to avoid such delay or to effect such performance including but not limited to acts of nature/God, acts of government, war, terrorist acts, whether certified or uncertified, labor disputes, delays in transportation, and delays in delivery or inability to deliver by Datalink's suppliers.

5. **SHIPMENT, DELIVERY, RISK OF LOSS AND TITLE.** Delivery will be FOB destination. In the absence of specific written instructions from Purchaser, Datalink will select the carrier. Title, risk of loss and/or damage to product will pass to Purchaser on delivery to Purchaser. Manufacturer will pack all product shipped in accordance with standard commercial practices. Purchaser will be responsible for and pay all shipping, freight and insurance charges, which charges Datalink may require Purchaser to pay in advance.

6. **CHANGES, CANCELLATIONS AND RETURNS.** If Purchaser issues a change order causing a delivery delay or cancels an order less than sixty (60) days prior to scheduled shipment, Purchaser shall be subject to a five percent (5%) charge based upon the list purchase price of the product. In addition, any such change in delivery dates caused by Purchaser establishing a delivery date greater than six (6) months from Purchaser's original order date shall constitute a new order for the affected products in determining the appropriate list price. If Purchaser cancels an order for special equipment or services any time after the order is received and confirmed by Datalink, Purchaser may be subject to an additional charge. Returns of products are only permitted if defective and are subject to the Manufacturer's Warranty as defined in Section 8 of these Terms and Conditions. Product returns authorized by the manufacturer pursuant to the manufacturer's warranty shall be subject to a restocking charge of twenty percent (20%) of the original list purchase price. Purchaser shall not set off any anticipated credit amounts against outstanding invoices of Datalink without prior written approval of Datalink.

7. **ACCEPTANCE OF PRODUCTS.** Product will be deemed to be accepted by Purchaser unless Purchaser notifies Datalink within a reasonable period of time (not to exceed thirty (30) days from date of delivery) of defect ("Rejection"). Purchaser shall notify Datalink in writing or by facsimile of the reason for Rejection and allow for on-site inspection, repair or replacement by Datalink. The return of any product is at Purchaser's expense and any associated risk of damage for returned product is the responsibility of

Purchaser until received, inspected and accepted by Datalink. Datalink's sole obligations for any defective product shall be limited to replacement pursuant to the provisions of the LIMITED WARRANTY set forth in Section 8 of these Terms and Conditions.

8. LIMITED WARRANTY; LIMITATION OF LIABILITY.

8.1 **Product Warranty.** Unless otherwise stated in writing, all products are sold subject to the applicable manufacturer's warranty in effect for such products at the time of acceptance of Purchaser's order by Datalink either provided directly to Purchaser or passed-through by Datalink ("Manufacturer's Warranty"). A copy of such warranty is available upon request. EXCEPT AS EXPRESSLY STATED IN THE DATALINK AND/OR APPLICABLE MANUFACTURER'S WARRANTY, DATALINK HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE REGARDING THE PRODUCTS. IN NO EVENT SHALL DATALINK BE LIABLE FOR LOSS OR CORRUPTION OF DATA, LOST PROFITS, BUSINESS INTERRUPTION LOSSES, THIRD PARTY LOSSES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE PRODUCTS.

8.2 **SERVICE WARRANTY.** ANY SERVICES PURCHASED HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER AND CONSISTENT WITH GENERALLY ACCEPTED INDUSTRY STANDARDS. EXCEPT AS EXPRESSLY STATED HEREIN, DATALINK HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE REGARDING ITS SERVICES. IN NO EVENT SHALL DATALINK BE LIABLE FOR LOSS OR CORRUPTION OF DATA, LOST PROFITS, BUSINESS INTERRUPTION LOSSES, THIRD PARTY LOSSES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES ARISING OUT OF ITS SERVICES. Purchaser's sole remedy for breach of Datalink's service warranty shall be re-performance of the Services.

8.3 [Reserved.]

9. [Reserved.]

10. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL DATALINK'S LIABILITY HEREUNDER, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE AMOUNTS PAID TO DATALINK FOR THE PRODUCTS OR SERVICES PURCHASED HEREUNDER GIVING RISE TO THE CLAIM.

11. **WAIVER.** The failure of either party to enforce at any time any provision of these Terms and Conditions shall not be construed to be a waiver of such provision or the right thereafter to enforce each and every provision. No waiver by either party, either express or implied of any breach of any of these Terms and Conditions shall be construed as a waiver of any other breach of such term or condition.

12. **ASSIGNMENT.** Neither party may assign or otherwise transfer its rights or obligations hereunder without the prior written consent of the other party, which shall not be unreasonably withheld; provided, however, that either party may assign this Agreement in connection with any merger or sale of all or substantially all of its assets or equity. In the event of any such assignment, any and all obligations of the assigning party under this Agreement, including any Service Addendum or Proposal, shall apply fully to any such assignee as if it were the assigning party under this Agreement. Any assignment in violation of the foregoing shall be deemed null and void. This Agreement, including any Service Addendums or Proposals shall inure to the benefit of the parties, their successors and permitted assigns.

13. **GOVERNING LAW.** The validity, interpretation, enforceability, and performance of these Terms and Conditions shall be governed by and construed in accordance with the law of the State of Florida without reference to provisions concerning conflicts of law. Venue for any lawsuit by either party against the other party or otherwise arising out of these Terms and Conditions, and for any other legal proceeding, shall be in Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida.

14. **TERMINATION.** If Purchaser fails to pay amounts owing to Datalink when due relating to any accepted Order, subsequent Orders, whether pending or accepted, may be terminated. If Purchaser ceases to conduct its operation in the normal course of business (including inability to meet its obligations as they mature) or if any proceeding under any bankruptcy or insolvency laws is brought against Purchaser, or a receiver for Purchaser is appointed or applied for, or an assignment for the benefit of creditors is made by Purchaser, Datalink may terminate this Order without liability, except for deliveries previously made or for product then completed and subsequently delivered in accordance with the terms of this Order.

15. **SEVERABILITY.** If any term or condition, or the application thereof, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of these Terms and Conditions shall remain in full force and effect.

16. **NOTICES.** All notices required or authorized by these Terms and Conditions shall be given in writing and shall be deemed effective upon receipt. All notices shall be given (i) by a nationally recognized delivery service, (ii) by first class, registered or certified mail, postage prepaid, (iii) by facsimile, or (iv) by electronic mail to the address, fax number, or email address, as



Corp Office: 10050 Crosstown Circle Suite 500 Eden Prairie, MN 55344 USA
 Branch Office: 2704 Summerfield Road Winter Park, FL 32792 USA

Quote Number: QUOTE00067715 v5
 Quote Created: 3/31/2015
 Quote Expiration: 4/30/2015

Jennifer Vander Pol
 Account Executive
 jennifer.vanderpol@datalink.com

Bill-To Company: City of Fort Lauderdale
 Ship-To Company: City of Fort Lauderdale

Stephanie Rasmussen
 Account Representative
 (952) 279-4805
 srasmussen@datalink.com

Symantec NetBackup Licenses Including 7x24 Datalink Essential Support, 1 Year

Ln #	Part #	Qty	Description	Ea Price	Net Price
Software					
1	SN6HC2F0-ZZZGS	18	SYMC NETBACKUP ENTERPRISE CLIENT 7.6 WIN/LNX/SOLX64 1 SERVER TIER 2 STD LIC GOV BAND S	\$1,507.56	\$27,136.08
2	OZCFXZF0-ZZZGS	28	SYMC NETBACKUP DATA PROTECTION OPTIMIZATION OPTION 7.6 XPLAT 1 FRONT END TB STD LIC GOV BAND S	\$1,458.84	\$40,847.52
3	XH7RC2F1-ZZZGS	1	SYMC NETBACKUP ENTERPRISE SERVER 7.6 WIN/LNX/SOLX64 1 SERVER TIER 2 STD LIC GOV BAND S	\$2,679.01	\$2,679.01
Maintenance					
4	SN6HC2Z0-EP1GS	18	SYMC NETBACKUP ENTERPRISE CLIENT 7.6 WIN/LNX/SOLX64 1 SERVER TIER 2 PARTNER ESSENTIAL 12 MONTHS GOV BAND S	\$655.13	\$11,792.34
5	OZCFXZZ0-EP1GS	28	SYMC NETBACKUP DATA PROTECTION OPTIMIZATION OPTION 7.6 XPLAT 1 FRONT END TB PARTNER ESSENTIAL 12 MONTHS GOV BAND S	\$633.97	\$17,751.16
6	XH7RC2Z1-EP1GS	1	SYMC NETBACKUP ENTERPRISE SERVER 7.6 WIN/LNX/SOLX64 1 SERVER TIER 2 PARTNER ESSENTIAL 12 MONTHS GOV BAND S	\$1,164.21	\$1,164.21
				Total:	\$101,370.32

Please FAX all POs to (952) 658-3530
 or E-Mail to srasmussen@datalink.com

Important Information:

TCPN Contract R5011
 All Symantec License Certificates are Shipped Electronically. NO Shipping Charges Apply to This Quote.

Terms and Conditions:

This price quotation is valid until the expiration date identified above. All quotes are subject to the attached Terms and Conditions for the City of Fort Lauderdale, and upon acceptance by the Purchaser, the Terms and Conditions apply to the agreement between the parties. Any additional or differing terms or conditions proposed by Purchaser or included in Purchaser's acceptance of this quotation or Purchase Order shall not become part of the agreement between the parties and are hereby expressly rejected, unless Seller expressly agrees to or has agreed to such additional or differing terms in writing.

appropriate, of the party specified in the purchase order or such other address, fax number, or email as either party may specify in writing.

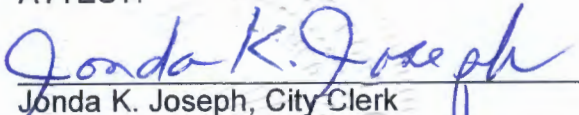
17. **SITE PREPARATION & INSTALLATION.** Installation of products is the sole responsibility of Purchaser unless such Services are purchased from Datalink.

18. **PRODUCT CHANGES.** Datalink reserves the right, without prior approval from or notice to Purchaser, to make changes to the products (a) which do not affect physical or functional interchangeability or performance at a higher level of assembly of Datalink equipment, or (b) when required for purposes of safety, or (c) to meet equipment specifications.

19. **EXPORT.** Regardless of any disclosure made by Purchaser to Datalink of an ultimate destination of the products and/or Datalink Technical Data, Purchaser covenants that it will not export or re-export, either directly or indirectly, any Datalink product, technical data, technology or services relating to such a product in violation of U.S. export control laws, including but not limited to the Export Administration Act of 1979, 50 U.S.C. App. §§ 2401-2420, the Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1707, and any regulations, orders or rule issued pursuant thereto ("U.S. Export Controls") and will obtain any and all licenses and approvals required for export or re-export of the products under U.S. Export Controls.


20. **ENTIRE AGREEMENT.** The parties intend that these Terms and Conditions shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous Terms and Conditions or agreement. The parties further intend that these Terms and Conditions shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial, administrative, or other legal proceeding involving these Terms and Conditions.

ATTEST:




Jonda K. Joseph, City Clerk

City of Fort Lauderdale

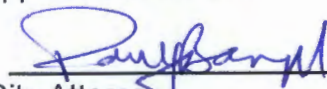


John P. "Jack" Seiler, Mayor



Lee R. Feldman, City Manager

Approved as to form:



Sr. Assistant City Attorney

ATTEST:

Datalink Corporation of Minnesota

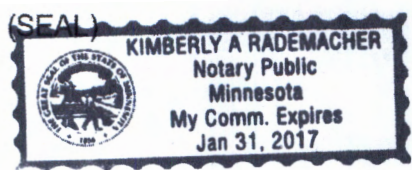
Stuart D. Missling
Print Name: Stuart Missling
Title: Sr. Director of Operations

By: [Signature]
Paul Lidsky
President

(CORPORATE SEAL)

STATE OF Minnesota
COUNTY OF Hennepin

The foregoing instrument was acknowledged before me this 10th day of April, 2015, by Paul Lidsky as president for Datalink Corporation, a Minnesota corporation authorized to transact business in the State of Florida as Datalink Corporation of Minnesota.



[Signature]
Notary Public, State of _____
(Signature of Notary)
Kimberly A Rademacher
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification _____
Type of Identification Produced _____